United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL WITH PROOF OF SERVICE

76-1237

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

B
P/S

UNITED STATES OF AMERICA,

Appellee,

v.

JOSEPH FALCONE and
JOSEPH CURRERI,

Appellants.

ON APPEAL FROM JUDGMENTS AND COMMITMENTS OF THE UNITED STATES DISTRICT COURT FOR DISTRICT OF VERMONT

APPENDIX

UNITED STATES COURT OF APPEALS
FILED
AUG 19 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

JAMES W. MURDOCH, ESQ.
131 Main Street
Burlington, Vermont

IRVING ANOLIK, ESQ.
225 Broadway
New York, New York

Attorneys for Appellants

HON. GEORGE W. F. COOK
United States Attorney
Attorney for Appellee
United States Courthouse
Rutland, Vermont

(5599A)

COUNSEL PRESS, INC., 55 West 42nd Street, New York, N.Y. 10036 • PE 6-8460

PAGINATION AS IN ORIGINAL COPY

INDEX

		Page
Docket Entries		A-1
Indictment		A-7
Transcript of Hearing on Motions to Suppress		A-16
Government's Witnesses:		
James Kallstrom	Direct	A-[illegible]
	Cross	A-[illegible]
	Redirect	A-33
Albert O. Axten	Direct	A-34
	Cross	A-38
	Redirect	A-44
		A-47
	Recross	A-46
Lawrence E. Playford	Direct	A-56
	Cross	A-59
	Redirect	A-61
James Kalstrom (recalled)	Direct	A-62
	Cross	A-63
	Redirect	A-65
Defendants' Witnesses:		
Joseph Falcone	Direct	A-48
	Cross	A-49
	Redirect	A-49
Joseph Curreti	Direct	A-50
	Cross	A-51
	Redirect	A-54
	Recross	A-55
Excerpts from Transcript of Trial		A-81
Discussion on Stipulation of Bankruptcy Documents		A-81
Jury Impaneled		A-89

INDEX

		Page
Ruling on Motions to Suppress Voluntariness of Defendants' Statements		A-90
Discussion on Stipulation of Various Documents		A-92
Government's Witnesses:		
J. Leo Laramee	Cross	A-93
	Redirect	A-99
	Recross	A-101
Warren Laramee	Direct	A-102
	Cross	A-110
	Redirect	A-113
Percy Sheltra	Direct	A-120
	Cross	A-142
John W. Symonds, Jr.	Direct	A-145
Mario Accardi	Direct	A-147
	Cross	A-186
	Redirect	A-223
		A-236
	Recross	A-230
		A-246
Joseph S. Wool	Direct	A-251
	Cross	A-255
	Redirect	A-264
Albert O. Axten	Direct	A-271
	Cross	A-290
	Redirect	A-309
		A-325
	Recross	A-315
		A-328
Government's Exhibit "77" - Grand Jury Testimony read to the Jury:		A-329
Testimony of Joseph Falcone		A-329
Testimony of Joseph Curreri		A-342

INDEX

		Page
Defendants' Witnesses:		
Gary Keith Michael	Direct	A-355
	Cross	A-362
	Redirect	A-371
		A-374
		A-376
	Recross	A-373
		A-375
Joseph Falcone	Direct	A-378
	Cross	A-385
		A-427
	Redirect	A-464
Joseph Campagna (recalled)	Cross	A-424
Joseph Curreri	Direct	A-474
	Cross	A-500
Judgment and Commitment of Joseph Falcone		A-511
Judgment and Commitment of Joseph Curreti		A-512
Notice of Appeal		A-513

BEST COPY AVAILABLE

DOCKET ENTRIES

Cr.75-37

COFFRIN

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

D.C. Form No. Rev.

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U.S.:
vs.	U. S. Attorney
JOSEPH FALCONE and JOSEPH CURRERI	
Superseding Indictment filed 11-12-75, P-12	For Defendant: [illegible] Joseph S. Wool, Esq. 131 Main St., Burlington, V Irving Anolik, Esq. 225 Broadway New York, NY Tel. 212 732-3051

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
			4-22-76	#25643	5 00	
J.S. 2 mailed JUN 5 1975	Clerk					
J.S. 3 mailed	Marshal					
Violation	Docket fee					
Title 18						
Secs. 371, 152 and 2 U.S.C.						

DATE 1975	PROCEEDINGS	
May 23	Filed Indictment for violation of Title 18, Sections 371, 152 and 2, United States Code.	1.
" "	Filed Record of Grand Jurors concurring.	
June 3	Issued Summons as to each Deft. returnable 6-16-75, 1:30 P.M., at Burlington, Vermont.	
" 11	Filed Summons as to each Deft. returned served.	2.
" 16	In Court before Judge Coffrin. Jerome F. O'Neill, Esq. for Govt. Joseph S. Wool, Esq. for Defts. Defts. present in Court with their attorney for Arraignment.	
" "	Mr. Wool indicates that he represents both Defts. for this proceeding.	
" "	Deft. were arraigned and each pled not guilty as to Counts I through VI inclusive.	
" "	Mr. O'Neill requests that bail be set at $10,000 for each Deft. and that Defts be released on their own recognizance.	
" "	ORDERED: Personal bond be set at $10,000 for each Deft.	
" "	Filed Appearance Bond in the sum of $10,000 for Deft. Falcone, released on his own recognizance.	3.
" "	" Appearance Bond in the sum of $10,000 for Deft. Curreri, released on his own recognizance	4.

see over

DOCKET ENTRIES

PROCEEDINGS	
1975	
Aug. 15	Filed Order - That all pretrial motions in the above entitled matter are to be filed prior to August 29, 1975 with a hearing thereon to be scheduled as soon thereafter as the Court's schedule permits, to be followed by trial in due course. Copy mailed to attorneys. 5.
Aug. 21	Filed Government's Notice of Readiness. P.6
" 22	Filed defendants' motion to inspect Grand Jury minutes, for a Bill of Particulars, etc. 7.
" "	Filed memorandum in support of defendants' motions. 8.
Sept. 5	" Government's Response to Deft's Motion to Inspect Grand Jury Minutes, for a Bill of Particulars, etc. 9.
Sept. 8	Filed Waiver of Defendant Joseph Falcone's presence. 10.
" "	Filed Waiver of Defendant Joseph Curreri's presence. 11.
" "	In open Court before Judge Coffrin, David Reed, Esq. for Gov't.; Joseph S. Wool, Esq. & Irving Anolik for defts.
" "	Hearing on Defendants' Motions to Inspect Grand Jury minutes.
" "	Statements made by Mr. Anolik; and by Mr. Reed;
" "	ORDERED: Motion denied.
" "	Hearing on Bill of Particulars. Parties have two weeks to file Bill of Particulars.
" "	With respect to item #3 - - Granted.
" "	With respect to item #4 - - Granted.
" "	With respect to item #5 - - Denied, with leave to raise said matter at a later time.
" "	With respect to item #6 - - No action taken.
" "	Case tentatively set for sometime early in January 1976.
Nov. 12	Filed Superseding Indictment for violation of 18:152.2.371, USC. 12.
" "	" Record of Grand Jurors concurring.
" 13	" Govt's Notice of Readiness. 13.
" 14	" Govt's Notice of Readiness. 14.
Dec. 15	In open Court before Judge Coffrin, defendants present with their attorney, Joseph S. Wool, Esq., for arraignment on superseding Indictment. Jerome O'Neill, Esq. for Government.
" "	Court makes inquiries of Mr. Falcone.
" "	Defendant Falcone waives reading of Indictment and enters a plea of not guilty to counts I thru V.
" "	Court makes inquiries of Mr. Curreri.
" "	Defendant Curreri waives reading of Indictment and enters a plea of not guilty as to counts I thru V.
" "	Ordered: that bail be continued as previously fixed as to each defendant. Defendant allowed 10 days to file motions with respect to superseding Indictment.
" "	Statements made to the Court by Mr. O'Neill with respect to schedule of trial.
" "	Court suggests that further hearing be set in the near future to dispose of any pending motions and to set a trial date.
" 24	Filed Defendants' Attorney Irving Anolik, Esq.'s Statement re Filing of Motions. 15.
" 29	Filed Defendants' attorney, Irving Anolik, Esq.'s Statement re Filing of Motions. 16.
1976	
Jan. 5	In open Court before Judge Coffrin, defendants present with their attorneys, Joseph S. Wool, Esq., James Murdoch, Esq. and Irving Anolik, Esq.. Jerome O'Neill, Esq. for Government.
"	Statements made by Mr. Anolik with respect to representation of

DOCKET ENTRIES

Jan. 5	both defendants by same counsel and conflicts that may arise from said situation.	
" "	Court makes inquiries of Mr. Falcone and Mr. Curreri re their rights to have separate counsel.	
" "	Statements made by Mr. O'Neill and by Mr. Anolik.	
" "	Mr. Wool states that in the event he is called as a Government witness, then, at that time, James Murdoch, Esq. will be Vermont counsel in this matter.	
" "	Court reviews motions ruled upon at the September 8, 1975, hearing.	
" "	With respect to motion filed December 29, 1975: Item #1, motion to dismiss Indictment is denied(defts. to file memo within one week; Gov't. to file reply memo within one week thereafter).	
" "	As to item #2, denied with understanding that matter may be reopened at a later date.	
" "	As to item #3, Gov't. to supply defts. with list of witnesses within 10 days..	
" "	As to item #4, matter is granted.	
" "	Continued hearing set on pending matter for January 19, 1976, at 1:30 PM.	
" 14	Filed Government's Bill of Particulars.	17.
" "	" Government's Certificate of Service.	18.
" "	" Government's Witness List.	19.
" 16	Filed Two Government Subpoenas to Testify returned served.	20.
" "	" Six Subpoanas to Produce Docuemnt or Object returned served.	21.
" 19	" Six Govt. Subpoenas to Testify returned served.	22.
" "	" Four Subpoenas to produce Document or Object returned served.	23.
" 20	Filed Three Government Subpoenas to Produce Document or Object returned served.	24.
" 22	Filed Three Government Subpoenas to Produce Document or Object returned served.	25.
" 23	" Stipulation--the pretrial discovery requested by the Defts. has been satisfactorily complied with by the Govt.	26.
" 26	" Govt's Subpoena to Testify returned served.	27.
" "	" " " " to Produce Document or Object returned served	28.
" 28	Filed Govt.'s Warrent for Arrest of Defendant.	29.
" 29	" Govt.'s Subpoena to Produce Document or Object	30.
"	Filed Deft.'s Motion to Suppress and Atty. Anolik's Statement.	31.
Feb 2	Filed Govt.'s Amendment to Witness List.	32.
" "	" Government's response to motion to suppress and memorandum of points and authorities.	33.
" 3	Filed Government's amendment to witness list.	34.
" 3	Filed Subpoena to produce document or object returned served.	35.
Feb. 4	In open Court before Judge Coffrin, trial by jury begun. George W. F. Cook, Esq. and Jerome O'Neill, Esq. for Government; James Murdock, Esq. and Irving Anolik, Esq. for defendants.	
" "	The jury was impaneled by the Clerk.	
" "	Ordered: that two alternates be impaneled.	
" "	Jury excused -- Hearing on defendants' motion to suppress.	
" "	The following witnesses, sworn by Clerk, were examined for Government: James K. Kallstrom, Albert O. Axten and	

DOCKET ENTRIES

Feb. 4	Laurence E. Payford.	
" "	The following witnesses, sworn by Clerk, were examined by Mr. Anolik: Joseph Falcone and Joseph Curreri.	
" "	Arguments were made to the Court by Mr. Anolik and by Mr. O'Neill.	
" "	Decision reserved.	
" 5	In open Court, jury excused, upon consideration of defendants' motion to suppress, it is	
" "	Ordered: Motion denied.	
" "	Counsel stipulated as to certain records in this cause.	
" "	Filed defendants' memorandum in support of suppression.	36.
" "	Jury present, the oath to Petit Jurors in criminal cases was administered by Clerk.	
" "	Opening statements were made to the jury by Mr. O'Neill and by Mr. Anolik.	
" "	The following witnesses, sworn by Clerk, were examined for Government: Ronald C. Schmucker, Ronald R. Plante, Glenn A. Wright, Bertha M. Theorit, J. Leo Larame and Warren Larame.	
" "	Ordered: that Mrs. Florence Moran, juror No. 10, be excused at this time; Donald R. Smith is now juror No. 10.	
" 5	Filed Government's motion to take deposition of Steven Boucher and memorandum of points and authorities.	37.
" 6	Filed Government's amendment to witness list.	38.
" 6	Trial resumed.	
" "	The following witnesses, sworn by Clerk, were examined for Government: Percy Sheltra, John W. Simonds, Jr., John L. Rossetti, Robert H. Brunelle, Sr., Edward B. Feeley and Thelma Lustig.	
" "	In Chambers, attorneys present, Mr. O'Neill withdraws Government's motion to take deposition of Steven Boucher.	
" 9	Trial resumed.	
" "	The following witnesses sworn by Clerk were examined for Government: Harry A. DeLong, Normand A. Grady and Mario Accardi.	
" 10	Trial resumed.	
" "	Mario Accardi, was recalled and further examined for Government.	
" "	The following witnesses sworn by Clerk were examined for the Government: Joseph S. Wool, Gennaro Falivene, Anthony V. Kessler, James Kallstron Lawrence E. Playford and Albert O. Axten.	
" "	The Grand Jury testimony of Joseph Falcone and Joseph Curreri was read to the jury by Mr. O'Neill.	
" "	At 4:25 P.M. - Government rests.	
" "	Filed Government"s request to charge and trial memorandum.	39
" "	Filed Defendant joint requests to charge.	40
" 11	In Court - Jury not present. Mr. Anolik request that Court enter an Order of dismissal as to each defendant. Objected to by Mr. O'Neill. Further statements made by Mr. Anolik.	
" "	ORDERED: Motion denied.	
" "	Trial resumed - Jury present.	
" "	The following witnesses sworn by Clerk were examined for Defendants: Reginald T. Abare, Bertha M. Theorit, Irene Fried, Gary Keith Michael Philip Falivene, Joseph Compagna and Joseph Falcone.	
" 12	Filed Government's Subpoena to testify returned served.	4
" "	" " " " " returned unserved.	4
" "	" three " " " " returned served.	4
" "	" nine " Subpoena to produce document or object retn. serv.	4

See next pag

DOCKET ENTRIES

Feb. 12	Trial resumed.	
" "	Joseph Falcone was recalled and further cross examined by Govt. Joseph R. Curreri, sworn by Clerk was examined for Defts.	
" "	At 11:55 am defendants rests.	
" "	Trial resumed - jury present. The following witnesses were recalled and examined for Government in rebuttal; Albert O. Axten, J. Leo Larame and Warren Larame.	
" "	At 2:55 pm Government rests in rebuttal. Evidence closed.	
" "	In Court - jury not present. Mr. Anolik, renews his motion that case be dismissed. Objected to by Mr. O'Neill.	
" "	ORDERED: Motion denied.	
" 13	Trial resumed. Mr. O'Neill makes opening arguments to jury for the Government, followed by Mr. Anolik. Rebuttal arguments made by Mr. Cook.	
" "	ORDERED: that James Quimette be appointed foreman of the jury.	
" "	At 12:25 PM the Court began his charge to the jury, concluding at 1:15 PM	
" "	Alan Barber, Paul Dingler and Marlene Jolley were sworn by the Clerk as officers in charge of jury.	
" "	ORDERED: that alternate juror be excused.	
" "	At 1:30 PM the jury retires to consider its verdict.	
" "	At 6:15 PM the jury come into Court and ask for further instructions. After receiving same, they again retire to deliberate the case.	
" "	At 10:50 PM the Jury come into Court and report a verdict of guilty as to each defendant to Counts I, II, III, IV & V.	
" "	Mr. Anolick request that jury be polled and jurors were polled by Clerk.	
" "	ORDERED: that present bail arrangement be continued in present condition and that a pre-sentence investigation report be made. Defendants to meet with probation officer on 2-18-76 in Burlington.	
" "	Filed defendants' first supplemental request.	45
" "	Filed defendants' second supplemental request.	46.
" 25	Filed 2 Pltf's subpoenas to produce returned not served.	47.
" "	" Pltf's subpoena returned not served.	48.
" "	" 4 Pltf's subpoenas returned served.	49.
Apr. 19	In open Court before Judge Coffrin, defendants present with their attorneys, Irving Anolik, Esq. and James Murdoch, Esq. for sentence. Jerome O'Neill, Esq. for Government.	
" "	Mr. Anolik moves to set aside the verdict, also to reconsider all motions made during trial.	
" "	Statements made to Court by Mr. O'Neill.	
" "	Ordered: Motions denied.	
" "	Statements made to Court by Mr. Anolik with respect to sentence, followed by Mr. Falcone, Mr. Curreri and Mr. O'Neill.	
" "	Filed Judgment and Probation/Commitment Order as to defendant Falcone -- defendant is committed to the custody of the Attorney General for imprisonment for a period of three years as to Counts 1, 2, 3, 4 & 5; said sentences to run concurrently with each other. It is further adjudged that defendant pay a committed fine of $ 2,000.00 on each count for a total of $ 10,000.00.	50.
" "	Filed judgment and Probation/Commitment Order as to defendant Curreri -- defendant committed to the custody of the	

DOCKET ENTRIES

Apr. 19	Attorney General for imprisonment for a period of three years as to counts 1, 2, 3, 4 & 5; said sentences to run concurrently with each other. It is further adjudged that defendant pay a committed fine of $ 5,00.00 on each count for a total of $ 2,500.00. 51.
" "	Imposition of sentence is stayed pending appeal as to each defendant -- Bail arrangements to remain in effect.
" 22	Filed Defendants' Notice of Appeal. Mailed copy to U. S. Attorney, James Murdoch, Esq., Irving Anolick, Esq., Court Reporter, Judge Coffrin and Clerk, U. S. Court of Appeals for the Second Circuit, N.Y., N.Y. 52,
" "	" Defendants' Certificate of Service. 53.
May 7	Mailed record on appeal to Clerk, U. S. Court of Appeals for the Second Circuit. Attys. notified.

INDICTMENT

COPY

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED
MAY 23 10 21 AM '75
CLERK
DEPUTY CLERK

UNITED STATES DISTRICT COURT

DISTRICT OF VERMONT

CR. 75-37

UNITED STATES OF AMERICA

v.

JOSEPH FALCONE and
JOSEPH CURRERI

Title 18, Sections 371, 152 and 2, United States Code

COUNT I

The Grand Jury charges:

From on or about December 13, 1973, up to and including the date of this indictment, in the District of Vermont and elsewhere, Joseph Falcone and Joseph Curreri, the defendants, unlawfully, willfully and knowingly did combine, conspire, confederate and agree together, with each other and with other persons to the Grand Jury known and unknown to commit offenses against the United States, to wit, to violate Title 18, United States Code, Sections 152 and 371.

It was part of said conspiracy that the defendants Joseph Falcone, President of Falcone Dairy of Brooklyn, New York and Vice President of Alburg Creamery, a Vermont corporation; and Joseph Curreri, Business Manager of Falcone Dairy, and other co-conspirators on January 31, 1974, in contemplation of a bankruptcy proceeding, in the District of Vermont, against another corporation, to wit, Alburg Creamery, a subsidiary corporation of Falcone Dairy, with intent to defeat the oankruptcy law, did knowingly and

fraudulently transfer and conceal property of Alburg Creamery; namely, accounts receivable to Alburg Creamery owed by Falcone Dairy, in excess of $100,000.

It was further part of said conspiracy that the defendants Joseph Falcone and Joseph Curreri did knowingly and fraudulently conceal and continue to conceal in a bankruptcy proceeding, property belonging to the estate of the bankrupt Alburg Creamery from the trustee and the creditors of Alburg Creamery, such concealment of property being of the following nature: The defendants Joseph Falcone and Joseph Curreri continuously failed to disclose to either the trustee or the creditors of Alburg Creamery the existence of property in the form of over $100,000 in accounts receivable to Alburg Creamery, the bankrupt.

It was further part of said conspiracy that the defendants Joseph Falcone and Joseph Curreri and other co-conspirators, after the filing of a bankruptcy against Alburg Creamery, in the District of Vermont, on December 13, 1973, did knowingly and fraudulently make false entry in documents affecting the property of Alburg Creamery, the bankrupt, to wit, the defendants did on January 31, 1974, cause entry to be made in the records of Falcone Dairy canceling all accounts payable to Alburg Creamery, knowing such entry to be false insofar as Falcone Dairy owed Alburg Creamery at that time in excess of $100,000 in accounts payable.

It was further part of said conspiracy that the defendants Joseph Falcone and Joseph Curreri and other co-conspirators did knowingly and fraudulently make a false oath and account in relation to a bankruptcy proceeding, to wit, that the defendants did prepare an account which was presented under oath in a Statement of Affairs, dated February 14, 1974, and submitted to the Bankruptcy Court, such Statement representing that Alburg Creamery had no assets in the form of accounts receivable; whereas in fact Alburg Creamery was owed at least $100,000 in accounts receivable from Falcone Dairy, the parent corporation.

It was further part of said conspiracy that the defendants Joseph Falcone and Joseph Curreri and other co-conspirators did knowingly and fraudulently make a false oath and account in relation to a bankruptcy proceeding, to wit, that the defendants did prepare an account which was presented under oath in a Statement of Affairs dated February 14, 1974, and submitted to the Bankruptcy Court, such Statement representing under oath, that Alburg Creamery was indebted to Falcone Dairy in the amount of $48,709.31, whereas in fact, Alburg Creamery was owed at least $100,000 in accounts receivable from Falcone Dairy, the parent corporation.

In furtherance of such conspiracy and to effect the objects thereof, the following overt acts were committed within the District of Vermont:

1. On or about the 14th of February, 1974, a Statement of Affairs was filed with the Bankruptcy Court concerning Alburg Creamery.

INDICTMENT

2. Representations were made through the above-mentioned Statement of Affairs concerning the property of Alburg Creamery.

3. On or about the 14th of February, 1974, Joseph Falcone, President of Falcone Dairy of Brooklyn, New York, and Vice President of Alburg Creamery, the bankrupt in question of Alburg, Vermont, traveled to the District of Vermont to execute a Statement of Affairs concerning the bankruptcy proceeding relating to Alburg Creamery.

All in violation of Title 18, Sections 152 and 371, United States Code.

INDICTMENT

COUNT II

The Grand Jury further charges:

On or about January 31, 1974, in the District of Vermont, the defendants Joseph Falcone, President of Falcone Dairy of Brooklyn, New York and Vice President of Alburg Creamery, a Vermont corporation; and Joseph Curreri, Business Manager of Falcone Dairy, on January 31, 1974, in contemplation of a bankruptcy proceeding, in the District of Vermont, against another corporation, to wit , Alburg Creamery, a subsidiary corporation of Falcone Dairy, with intent to defeat the bankruptcy law, did knowingly and fraudulently transfer and conceal property of Alburg Creamery; namely, accounts receivable to Alburg Creamery owed by Falcone Dairy, in excess of $100,000, to violate Title 18, Sections 152 and 2, United States Code.

INDICTMENT

COUNT III

The Grand Jury further charges:

On or about December 13, 1973, up to and including the date of this indictment, in the District of Vermont, the defendants Joseph Falcone and Joseph Curreri did knowingly and fraudulently conceal and continue to conceal from the trustee and the creditors of Alburg Creamery property belonging to the estate of the bankrupt Alburg Creamery, such concealment and property being of the following nature: The defendants Joseph Falcone and Joseph Curreri continuously failed to disclose to either the trustee or the creditors of Alburg Creamery the existence of property in the form of over $100,000 in accounts receivable to Alburg Creamery, the bankrupt, owed by Falcone Dairy, to violate Title 18, Sections 152 and 2, United States Code.

INDICTMENT

COUNT IV

The Grand Jury further charges:

On or about January 31, 1974, in the District of Vermont, the defendants Joseph Falcone and Joseph Curreri after the filing of a bankruptcy against Alburg Creamery, in the District of Vermont, on December 13, 1973, did knowingly and fraudulently make false entry in documents affecting the property of Alburg Creamery, the bankrupt, to wit, the defendants did on January 31, 1974, cause entry to be made in the records of Falcone Dairy canceling all accounts payable to Alburg Creamery, knowing such entry to be false insofar as Falcone Dairy owed Alburg Creamery at that time in excess of $100,000 in accounts payable, to violate Title 18, Sections 152 and 2, United States Code.

INDICTMENT

COUNT V

The Grand Jury further charges:

On or about February 14, 1974, in the District of Vermont, the defendants Joseph Falcone and Joseph Curreri did knowingly and fraudulently make a false oath and account in relation to a bankruptcy proceeding, to wit, that the defendants did prepare an account which was presented under oath in a Statement of Affairs, dated February 14, 1974, and submitted to the Bankruptcy Court, such Statement representing that Alburg Creamery had no assets in the form of accounts receivable; whereas in fact Alburg Creamery was owed at least $100,000 in accounts receivable from Falcone Dairy, the parent corporation, to violate Title 18, Sections 152 and 2, United States Code.

INDICTMENT

COUNT VI

The Grand Jury further charges:

On or about February 14, 1974, in the District of Vermont, the defendants Joseph Falcone and Joseph Curreri did knowingly and fraudulently make a false oath and account in relation to a bankruptcy proceeding, to wit, that the defendants did prepare an account which was presented under oath in a Statement of Affairs dated February 14, 1974, and submitted to the Bankruptcy Court, such Statement representing under oath, that Alburg Creamery was indebted to Falcone Dairy in the amount of $48,709.31, whereas in fact, Alburg Creamery was owed at least $100,000 in accounts receivable from Falcone Dairy, the parent corporation.

A TRUE BILL

Clayton Wilson
Foreman

GEORGE W. F. COOK
UNITED STATES ATTORNEY

BY David A. Reed
DAVID A. REED
ASSISTANT U.S. ATTORNEY

DATE: May 22, 1975

A true copy,

ATTEST:

EDWARD J. TRUDELL, Clerk

BY: _____
Deputy Clerk

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF VERMONT

UNITED STATES OF AMERICA	:	
	:	Criminal Action File
V	:	
	:	Number 75-37
JOSEPH FALCONE AND JOSEPH CURRERI	:	

HEARING ON MOTIONS TO SUPPRESS

Before: HONORABLE ALBERT W. COFFRIN, U.S.D.J., Burlington, Vermont, February 4, 1976.

Appearances:

HONORABLE GEORGE W. F. COOK, United States Attorney, and HONORABLE JEROME F. O'NEILL, Assistant United States Attorney, for the Government.

IRVING ANOLIK, ESQ., 225 Broadway, New York, N.Y. and JAMES MURDOCH, ESQ., Burlington, Vermont, for the Defendants.

Francis A. Cumming, Reporter
28 Waterman Street
Barre, Vermont 05641

INDEX

	DIRECT	CROSS	REDIRECT	RECROSS
Discussion on procedure	3			
James Kallstrom	4	11	18	
Albert O. Axten	19	23	29 32	31
Joseph Falcone	33	34	34	
Joseph Curreri	35	36	39	40
Lawrence E. Playford	41	44	46	
James Kallstrom, recalled	47	48	50	
Arguments	50			
Certificate	66			

3

THE COURT. We'll proceed to defendants' motion to dismiss. Counsel ready to proceed, as far as that is concerned?

MR. ANOLIK. Yes, your Honor.

MR. O'NEILL. I assume the Court means, motion to suppress.

THE COURT. What did I say?

MR. O'NEILL. I think you said, motion to dismiss.

THE COURT. Yes, motion to suppress. Mr. Anolik, it is customary to let the Government proceed, and this doesn't change the burden in the case at all. It is an expeditious way to handle it. I assume you wish to proceed in that way.

MR. O'NEILL. Yes. We discussed it with Mr. Anolik, and that is the best procedure.

MR. ANOLIK. I thought I would take up one question that your Honor hasn't resolved, as far as I know. We told your Honor, some time ago, we object to any conference where a conversation between either defendant and Joseph Wool would be elicited by the Government. In other words, the Government lists as an overt act a conversation between Joseph Wool and the defendants. We believe that would be within the purview of the attorney-client privilege. Maybe we'll never come to it, your Honor, but I want to preserve that as an ob-

jection in the future and ask for a mistrial in the event they try to introduce it, your Honor.

THE COURT. I think that will have to be in context, and I think I know enough about the prosecuting attorneys, if they are getting into any areas they think will want to foul up a mistrial, they will approach the bench, and we will handle it at that particular time.

MR. ANOLIK. Very well, your Honor.

THE COURT. Proceed, Mr. O'Neill.

MR. O'NEILL. The Government, as this time, calls James Kallstrom.

JAMES KALLSTROM, Sworn

DIRECT EXAMINATION

Q (By Mr. O'Neill) May we have your name, sir?

A. James Kallstrom.

Q How are you employed, Mr. Kallstrom?

A. Special Agent with the F.B.I., New York City.

Q How long have you been so employed?

A. Approximately, six years.

Q How, Mr. Kallstrom, directing your attention to August 19, 1974, did you have occasion to receive a communication through F.B.I. channels asking you to interview Mr. Joseph Falcone?

A. Yes, sir.

Q And, what information was provided to you with respect to

what you would ask of Mr. Falcone and what this was with respect to?

A. We were asked to interview Mr. Falcone concerning the bankruptcy of Alburg Creamery and also concerning the situation where a Mr. Ocera--O-c-e-r-a, Charles, first name--picked up some equipment at Milton Creamery in Vermont.

Q Were you to make any inquiries concerning second signatories at a cheese company?

A. Yes. We were to inquire to the authorized check signer of the corporation of Lido Cheese Company.

Q And, anything with respect to Milton Cooperative?

A. Lido Eheese Company. Would you repeat that?

Q Were you asked to check into, with respect to the payment of Milton Coop.?

A. Yes, sir. We were asked to inquire into payment in the amount of $5,000, $5,000 and $10,076.35.

Q Based upon the information available to you at that time, was Mr. Falcone a potential defendant, in your mind?

A. No, sir.

Q Now, where did you go to interview Mr. Falcone?

A. He was located at Lido Cheese Company in Brooklyn, New York.

Q Who else was with you, at that time?

A. Agent Lawrence E. Playford.

Q To the best of your knowledge, does Mr. Falcone have an

interest in, or work at the Lido Cheese Company?

A. Yes, sir.

Q Mr. Kallstrom, at the time that you interviewed Mr. Falcone, did you advise him of what his rights were pursuant to the Miranda decision?

A. I did not.

Q At the time you interviewed him, was he, at any time, under arrest?

A. He was not.

Q If Mr. Falcone had sought to leave the spot you were interviewing him, would you have detained him?

A. No, sir.

Q If he had asked you to leave, would you let him leave at that time?

A. Yes, sir.

Q Was Mr. Falcone willing to talk with you, at that time?

A. Yes, he was.

Q Now, Mr. Kallstrom, directing your attention to October 1, 1974, did you have occasion again to interview Mr. Falcone at that time?

A. Yes, I did.

Q Again, did you receive a communication through F.B.I. channels to conduct an interview of him?

A. That is correct.

Q What, basically, were you to interview him about?

A. Concerning a check in the amount of $10,000 drawn on Lido Cheese accounts payable to Milton Creamery.

Q Again, at that time, was Mr. Falcone a potential defendant, in your mind?

A. He was not.

Q Where did the interview take place?

A. At Lido Cheese Company in Brooklyn, New York.

Q Again, was he under arrest or detained in any manner?

A. He was not.

Q If Mr. Falcone had asked you to leave, or sought to leave himself, would you have either left or allowed him to leave?

A. Yes, sir.

Q Was Mr. Falcone willing to speak with you, at that time?

A. He was.

Q Directing your attention to December 4, 1974, did you again have occasion to interview Mr. Falcone at that time?

A. What was that date again?

Q December 4, 1974.

THE COURT. December 4th?

MR. O'NEILL. Yes, your Honor.

A. Yes, sir.

Q (By Mr. O'Neill) And, again, was that pursuant to a request through F.B.I. channels?

A. Yes, it was.

Q Where did that interview take place?

A. Also at Lido Cheese Company, Brooklyn, New York.

Q At that time, did you advise Mr. Falcone that he did not have to speak with you?

A. Yes, sir, I advised him he did not have to make any statement.

Q Did you say anything else to him?

A. No, I did not.

Q At that time, was he a defendant, in your mind?

A. No, sir.

Q Were the circumstances the same with respect to whether Mr. Falcone was under arrest, and this type of thing?

A. Yes, they were.

Q In other words, you did not arrest him, or would not have arrested him, and you would have left if he asked you to?

A. Yes.

Q Was Mr. Falcone willing to speak with you?

A. Yes, he was.

Q For purposes of identification, do you see Mr. Falcone here in the courtroom today?

A. Yes.

Q Would you identify him, please?

A. He is sitting with his hand to his face. (indicating)

MR. ANOLIK. We concede his identity.

Q (By Mr. O'Neill) Directing your attention to January, 1975, did you have occasion to speak by telephone with Mr.

Joseph Curreri?

A. Yes, I did.

Q Pursuant to that conversation, did there come a time when Mr. Curreri, specifically on January 9, 1975, came to your office in New York to speak with you?

A. Yes, he did.

Q Did he just come in at that time, or was it by appointment, or how would you describe it?

A. It was a mutual agreement; a convenient time for Mr. Curreri and myself.

Q I will show you what has been marked as Government's Exhibit "1" for identification and ask if you can identify that? (Handed to the witness)

A. Yes, I can.

Q Would you, please?

A. It is a voluntary appearance and advice of rights form.

Q Did Mr. Curreri sign that document?

A. He did.

Q Who was present at the time he signed it?

A. Myself and Agent Lawrence E. Playford.

Q MR. O'NEILL. Your Honor, I have other questions with respect to going over the form and that type of thing. Before doing that, we move the admission of this document in connection with this hearing.

THE COURT. Any objection?

MR. ANOLIK. We have no objection, without conceding the voluntariness, of course.

THE COURT. All right. Government's "1" is admitted.

(Government's Exhibit "1" was received in evidence.)

Q (By Mr. O'Neill) Was Mr. Kallstrom also present with you during the time of that interview?

A. Mr. Playford; yes, sir.

Q Pardon me; Playford. How did you proceed with Mr. Curreri with respect to the form when he came into the office?

A. I read the form, and asked him to also read it, and asked him if he understood it.

Q What was his reaction to that?

A. He stated he understood it.

Q Did you have to exert any pressure on him to obtain t signature on the form?

A. No, sir.

Q Was Mr. Curreri willing to speak with you?

A. He was.

Q In each instance, did Mr. Falcone speak with you voluntarily?

A. He did.

Q On any of the t ree occasions, did you have to exert any pressure on Mr. Falcone to have him speak with you?

A. No, sir.

Q Did he sign that waiver voluntarily?

A. Excuse me. Mr. Curreri.

Q Excuse me. Did Mr. Curreri sign the acknowledgment of rights and the waiver on there voluntarily?

A. Yes, sir.

MR. O'NEILL. That is all we have at this time with respect to those particular statements, your Honor.

THE COURT. Mr. Kallstrom, did you identify yourself to Mr. Falcone on the occasion of your first visit?

MR. KALLSTROM. Yes, sir.

THE COURT. Did you advise him in what capacity you were seeing him, as an agent?

MR. KALLSTROM. Yes, sir.

THE COURT. He was aware you were an agent?

MR. KALLSTROM. Yes, sir.

THE COURT. Mr. Anolik.

CROSS EXAMINATION

Q (By Mr. Anolik) Mr. Kallstrom, from whom did you receive the communication asking you to interview Mr. Falcone?

A. From our Albany office which is the headquarters for the office here in Burlington.

Q It comes out of Albany, is that it?

A. That is the head office, so any communication that would come out of there would come out of that office.

Q To whom did you go to supply the information you obtained?

A. To our office.

Q In Albany?

A. Yes, sir.

Q Did you know the nature of the investigation at all?

A. Yes. I was looking into the circumstances of the incident at Alburg.

Q Did you know why you were looking into it, or merely told to interview and told to get whatever information you could get?

A. As the investigation started off, we were basically just asked to do certain tasks.

Q By whom?

A. Our office up here.

Q Who?

A. In particular?

Q Yes.

A. It is the special agent in charge.

Q What is his name?

A. I do not know.

Q You don't know who gave you the instructions then?

A. No, I do not.

Q Do you have any inter-office memorandum indicating what you are supposed to do?

A. No, I do not at this time.

Q By "this time," does that mean you have one some place else?

A. I do not know. I would have to check the file.

Q Could you determine that and let the Court know?

A. Yes, sir.

Q I am particular interested, since I am not trying to keep any secrets from the Court or the witness, in trying to determine whether or not the communicated to you indicated a criminal investigation was in progress?

A. Yes, sir.

Q Was there such a communication?

A. To my knowledge, Mr. Falcone or Mr. Curreri were not subjects of any criminal investigation at the time.

Q To your knowledge, you don't know whether anyone else in the Government had a criminal prosecution?

A. I wouldn't know.

Q So, you are not sure at that point whether your information would be used as part of a jigsaw puzzle?

A. I was sure, in my mind, the gentlemen were not subjects of a case.

Q I appreciate that, but you did not know what role your interview was playing in some overall scheme of things, is that right?

A. I was not first-face sufficient enough to develop an opinion.

Q You were merely executing a function you were asked to do to interview relative to a particular matter, is that correct?

A. That is correct.

Q You were going to report back to someone else, isn't that true?

A. That is correct.

Q And, you didn't know what that someone else was going to do with that report, isn't that so?

A. There is no way I could know that.

Q Right. So, consequently, youdid not feel at that point in your own mind necessary to advise him of his Miranda rights?

A. I did not feel it necessary.

Q If you were told, specifically, that he was the subject of a possible criminal prosecution, wou d you have given him his Miranda rights?

A. If I thought he would probably make statements that would incriminate himself concerning an investigation, I would advise him of his rights.

Q As a matter of fact, you did give Mr. Curreri, you say, a formal Miranda warning?

A. Yes.

Q At that time, you had no intention of arresting Mr. Curreri?

A. No, I did not.

Q You had no idea he was the subject of a criminal prosecution, did you?

A. I couldn't answer that question.

Q Was there a reason you treated Mr. Curreri different than Mr. Falcone?

A. He appeared at our office.

Q He appeared at your office pursuant to your direction, isn't that true?

A. Pursuant to a mutual agreement. I did not direct him.

Q Fine. Pursuant to a mutual agreement, and he knew you were an agent of the F.B.I.?

A. He certainly did.

Q The same with Mr. Falcone, he knew you were an agent of the F.B.I.?

A. Yes, he did.

Q And, you telephoned him for an appointment?

A. Who, sir?

Q Mr. Falcone, before your interviews of Mr. Falcone, you telephoned him in advance to arrange it?

A. I believe we just went to his place of business.

Q Cold, so to speak, without prior warning, is that correct?

A. It would strictly be recollection. I would have to refresh my memory on that.

Q Agent, give me your best recollection.

A. My best recollection is that I probably just went there.

I might have called him on one occasion, I don't know.

Q Certainly, on two occasions you just walked in and identified yourself and asked if you could speak to him, isn't that true?

A. That is probably the case.

Q When you spoke with him you identified yourself as an agent of the F.B.I., did you not?

A. Yes, sir.

Q Now, did you warn Mr. Falcone of his Miranda rights at any time?

A. I advised him on the third interview he should be aware he did not have to answer any questions if he did not want to.

Q You did not tell him he had a right to counsel, or if he could not afford counsel, one would be obtained?

A. No, I did not.

Q Now, at any time did you inform Mr. Falcone of his possible criminal prosecution of bankruptcy fraud? Namely, 18 United States Code, Section 152?

A. I did not.

Q Are you familiar with 18 United States Code, Section 152?

A. Vaguely.

Q You are aware of such a thing as bankruptcy fraud?

A. I am.

Q And, when you went to Mr. Falcone's place of business, did

you identify yourself to anyone else besides Mr. Falcone? Namely, his employer?

A. His employer?

Q Yes.

A. His employees?

Q I mean, his employees.

A. I think on maybe one or two occasions he was not standing so I would say to his secretary, "is Mr. Falcone in".

Q And, you would say you were from the F.B.I.?

A. Not necessarily.

Q I am not asking necessarily. What is your recollection?

A. My recollection is I did not say I was from the F.B.I.

Q In other words, you just said that you wanted to speak with him?

A. That is true.

Q Didn't she say to you "Who are you; where are you from; do you have an appointment"?

A. I don't believe so.

Q So, you are not sure?

A. I am not sure.

Q She might have said something?

A. She might have.

Q As a matter of fact, are you aware now that the Government, if you are aware, that the Government intended to use your interviews against these defendants?

A. Yes, sir.

Q So, would it not be a fact in retrospect your interviews did form part of a jigsaw puzzle that fitted into a pattern of alleged criminality?

A. I don't know, sir. I don't have all the facts.

MR. ANOLIK. No further questions.

REDIRECT EXAMINATION

Q (By Mr. O'Neill) How familiar were you with the over-all facts of this entire case?

A. Not very familiar, sir.

Q At the time you interviewed Mr. Falcone, you were interviewing him in connection with the criminal investigation of some type, is that right?

A. Yes, sir.

Q When you received the information to conduct the interview, is this by means of a standard F.B.I. routing between offices to contact a particular individual?

A. Yes, sir.

Q This is where ever the subject is?

A. Yes.

Q Described in the F.B.I. as "leads"?

A. Yes, sir.

MR. O'NEILL. Nothing further, your Honor.

THE COURT. Anything further, Mr. Anolik?

MR. ANOLIK. Nothing of this witness, your

Honor.

THE COURT. Thank you, Mr. Kallstrom.

MR. KALLSTROM. Thank you, your Honor.

ALBERT O. AXTEN, Sworn

DIRECT EXAMINATION

Q (By Mr. O'Neill) May we have your name, sir?

A. Albert O. Axten.

Q How are you employed, Mr. Axten?

A. Special Agent, F.B.I.

Q How long have you been so employed?

A. Twenty-seven years.

Q Where are you presently stationed?

A. Montpelier, Vermont.

Q Are you an accountant with the F.B.I.?

A. Yes, I am.

Q And, you might be described as a "Case Agent" with respect to United States versus Falcone and Curreri?

A. Yes, I am.

Q In connection with your duties as an agent with the F.B.I., did you have occasion on December 9, 1974 to speak with Mr. Joseph Wool in the presence of Mr. Joseph Falcone, Sr. and Mr. Joseph Falcone, Jr.?

A. That was on December 9th.

Q I meant to say December 9th, if I didn't.

A. Yes, I did.

Q Would you tell us the circumstances under which you met with these three gentlemen?

A. They were appearing in Burlington at the request of the bankruptcy judge, and I had requested if they did appear, I would like to speak with them. They did appear at the office of the United States Attorney in this building.

Q At the time that you spoke with these gentleman, who was present?

A. Mr. Falcone, his son, and Mr. Joe Wool, Attorney.

Q Did you have a conversation with Mr. Wool with respect to your desire to interview Mr. Joseph Falcone, Sr.?

A. Yes, I did.

Q What did you indicate to Mr. Wool you wished to speak with his client about?

A. I told him I wanted to speak with him regarding entries in the books and records of Falcone Dairy Products, Inc.

Q During the period of time you spoke with Mr. Wool, was Mr. Joseph Falcone, Sr. present at all times?

A. Yes, he was.

Q Did Mr. Wool raise any questions with you into whether there was a criminal investigation?

A. Yes, he did.

Q What did you advise him in that respect?

A. I advised him it was.

Q Was there any indication to Mr. Wool if you interviewed Mr. Falcone, you would advise him of his rights and this type of thing?

A. I did.

Q Did you have some discussions with Mr. Wool with respect to the bankruptcy proceedings?

A. No, I didn't. I questioned him regarding entries in the books and records.

Q Did you have discussion in this area with respect to Mr. Wool?

A. Yes, I did.

Q Did there come a time when Mr. Joseph Falcone, Jr. made some statements?

A. No, Mr. Falcone, Sr. did.

Q Excuse me. He made some statements?

A. Yes, he did.

THE COURT. Mr. O'Neill, Mr. Falcone, Sr. is the gentleman in the courtroom now?

MR. O'NEILL. Yes, your Honor.

Q (By Mr. O'Neill) id, did you elicit those responses in any way from Mr. Falcone?

A. No, I did not.

Q Give us the context of how Mr. Falcone's statement came about?

A. I explained the area in which I wanted to question Mr.

Falcone, to Mr. Wool. In other words, I was explaining to Mr. Wool the area that I would ask questions of Mr. Falcone, and Mr. Wool gave me certain responses from his own knowledge, and in the course of that conversation, Mr. Falcone interrupted and gave responses.

Q Did you make a statement to Mr. Wool with respect to seeking some particular information with respect to some bankruptcy?

A. Yes, I did.

Q And, did Mr. Falcone begin to make a response to that, or did Mr. Wool respond to that?

A. Mr. Falcone began to make a response to it and Mr. Wool instructed him to be quiet.

Q Did Mr. Falcone volunteer any other information?

A. Yes, he did.

MR. ANOLIK. Objection to the word "volunteered".

THE COURT. Objection sustained.

Q (By Mr. O'Neill) Did Mr. Falcone make any other statement after that incident?

A. Yes, he did.

Q Did you, at any time, direct any questions to Mr. Falcone?

A. No, I did not.

Q Was Mr. Wool present during the entire period?

A. Yes, he was.

Q To switch to another area during the period, were you the agent which originated the leads that were sent to New York and ultimately ended up with Agent Kallstrom?

A. Yes, I was.

Q At that time, basically, what information did you commuicate down as to what you would like to have done?

A. I instructed the interviews to be conducted of Mr. Falcone and Mr. Curreri.

Q At that point in time, were Mr. Falcone and/or Mr. Curreri potential defendants, in your mind?

A. Yes, they were.

Q Was that communicated on the communication to New York?

A. Yes, it was.

MR. O'NEILL. Nothing further at this time, your Honor.

THE COURT. Mr. Anolik.

CROSS EXAMINATION

Q (By Mr. Anolik) Mr. Axten, you notified your Albany office that you wanted these interviews to be conducted, is that correct?

A. That is correct.

Q And, then you indicated it was a criminal investigation and you wanted certain information developed, is that correct?

A. That is correct.

Q All right. Now you have been an agent for twenty-seven

years, is that right?

A. That is right.

Q Would it be fair to say it is your practice when you interview, as you did in the case of Mr. Falcone, that if you had ordered Mr. Falcone into your office, knowing that he was a possible target of a criminal case, you would have given him his Miranda warnings, would you not?

A. That is correct, but I wouldn't have ordered him in.

Q The fact he was there, did you make it clear to him he didn't have to say anything?

A. Yes, I did.

Q Despite the fact his lawyer was there?

A. That is correct.

Q Notwithstanding that, you did conduct an interview with respect to Mr. Wool, isn't that so?

A. That is right.

Q And, Mr. Wool was not the subject of any investigation, however?

A. That is correct.

Q Would it be fair to say that Mr. Wool had not been there, that you would have certainly have advised Mr. Falcone of his rights?

A. That is correct.

Q Now, do you have a copy of the report that you furnished with respect to that interview?

A. Yes, I do.

Q Pardon me?

A. Yes, I do.

MR. ANOLIK. May I have it marked for identification, your Honor?

THE COURT. You may.

MR. ANOLIK. Do you have the original? I have my copy, your Honor, but whatever you prefer. Is it okay if I mark my copy?

THE COURT. The copy is fine.

DEPUTY CLERK CURRAN. Defendants' Exhibit "A" for identification is an F.B.I. report dated December 12, 1974.

MR. ANOLIK. May I approach the witness, your Honor?

THE COURT. Certainly.

Q (By Mr. Anolik) Is this the report, or a copy of it, that you are referring to? (Handed to the witness)

A. Yes, it is.

Q Okay. Referring then to Defendants' Exhibit "A", would you tell us whether or not there was a conversation between you and Mr. Wool wherein Mr. Wool said that his client did not desire to be interviewed?

A. No, he did not. He stated he did not desire his client to be interviewed.

Q All right, put it that way. Was there a statement by Mr. Wool that he did not desire his client to be interviewed?

A. That is right.

Q He was representing his client?

A. That is right.

Q Would it be fair to say you were interpreting the sentiment of his client at that time?

A. Yes, sir.

Q Would it be fair to say, also, Mr. Axten, that there was never, at least an understanding, that only the conversation between you and Mr. Wool would be reported, that anything the client said was off limits, so to speak?

A. No.

Q As a matter of fairness, wasn't that your understanding?

A. No, it was not.

Q Do you get the thrust of what I am saying, Mr. Axten?

A. No, I don't.

Q In other words, I am asking you whether or not, as an experienced F.B.I. agent, was it not the understanding between an experienced lawyer, Mr. Wool--and I think you will admit he is an experienced lawyer, is he not?

A. That is correct.

Q Since he said he did not desire his client to be interviewed, was it not the thrust of that conversation that anything his client said was really directed to his lawyer and should

not have been used as a statement against his client?

A. Well, I don't interpret his remarks as being directed toward his client; his own statement being made right in my presence, I couldn't choose to ignore something he told me.

Q Mr. Axten, did you tell Mr. Falcone, or Mr. Wool, "Do you realize anything you say that I can hear is going to be used against you"? Did you say that?

A. No.

Q Well, he was correcting something his lawyer was saying, isn't that so, or explaining something to his lawyer?

A. That is correct.

Q So it was really in the nature of trying to elucidate something his lawyer was trying to tell you, isn't that so?

A. That is correct.

Q You were not interviewing Mr. Falcone, were you?

A. No, I was not.

MR. ANOLIK. I persist in my objection to that, your Honor.

THE COURT. What objection are you persisting in?

MR. ANOLIK. Persisting in the objection that the interview was not with Mr. Falcone; that it was, fundamentally, unfair, your Honor, to pick up a statement of Mr. Falcone directed to his own attorney, and to use

that against him, your Honor, because under the doctrine of Kerr against California and a whole line of cases indicating that fundamental fairness requires that the Government not through some--I am not acusing Mr. Axten of a rouse--but through some misunderstanding pick up something that was never intended for his ears.

MR. O'NEILL. We would like a little redirect at some point.

THE COURT. All right. I want to know whether you are going to offer "A" in connection with this interrogation?

MR. ANOLIK. For the purpose of this hearing, yes. Oh, sure.

THE COURT. We will admit "A".

(Defendants' Exhibit "A" was received in evidence.)

MR. ANOLIK. I don't have a copy of this, your Honor.

THE COURT. I am sure one can be made available.

MR. ANOLIK. Shall I hand it to the Clerk, your Honor?

THE COURT. Yes. You don't have to ask. I might say, so I don't have to instruct you in the presence of the jury, all objections in court, you rise when you

give the objection. I know that is not the practice in some places.

MR. ANOLIK. I try to do that.

THE COURT. Mr. O'Neill.

MR. O'NEILL. Thank you, your Honor.

REDIRECT EXAMINATION

Q (By Mr. O'Neill) Agent Axten, I take it you do not set the standards within the F.B.I. where witnesses are to be advised of their rights, is that correct?

A. No, I don't.

Q In other words, the statement by you you would have advised Mr. Falcone of his rights in certain situations is a decision you personally make based on what you feel you should do, is that correct?

A. That is right.

Q As a general policy in terms of knowledge of other agents that you have to advise rights more than most agents do?

MR. ANOLIK. I object to that, your Honor, unless he has some standard of comparison.

MR. O'NEILL. We have gotten into this whole thing trying to compare it with Mr. Kallstrom, whether he would have given it.

THE COURT. What difference does it make, as far as Mr. Axten is concerned?

MR. O'NEILL. It is not that significant,

your Honor. I will withdraw the question.

Q (By Mr. O'Neill) I think Mr. Anolik asked you a question, and I believe this was the question, or something to this effect--Was Mr. Wool interpreting the sentiments of his client when he said he did not desire his client to be interviewed? What was your believe as to what Mr. Falcone wished to do at that point in time? Did he wish to make statements to you?

A. It was my impression he was trying to clarify a situation for my benefit.

Q When you were there in that room with the communications with Mr. Wool that Mr. Falcone made from his mouth, were they directed toward Mr. Wool or toward you? How were they directed?

A. I can't answer that. My impression was it was made to me to clarify something that Mr. Wool had stated.

Q Were the conversations in Mr. Wool's ear, or in a hushed tone?

A. No.

Q Did you have any difficulty hearing it?

A. No.

Q Were the statements in response to questions by you?

A. Yes.

Q Were they directed to Mr. Falcone, though?

A. No.

Q Was there any suggestion of your having an interview off the record, or anything of this nature?

A. No.

Q This was never brought up?

A. No.

RECROSS EXAMINATION

Q (By Mr. Anolik) Mr. Axten, did you ever tell Mr. Falcone or Mr. Wool that anything audible that Mr. Falcone said would be used against him?

A. No.

Q Is it not a fact that the ground rules of your conversation with Mr. Wool, where Mr. Falcone was present, was that Mr. Wool would converse with you and that his client would not be interviewed, isn't that true?

A. No. He said he didn't want his client interviewed.

Q He said he didn't want his client interviewed?

A. Yes, after I explained the area in which I was going to question his client.

Q I understand that, but he made that quite clear he wanted to do the answering, he didn't want his client to answer?

A. He was answering any questions I was asking. I explained to him the area I was going to question his client in, in the event his client agreed to the interview.

Q Right. That was the nature of your discussion with Mr. Wool?

A. Right.

Q Is it not a fact Mr. Wool declined to give that interview from his client? Isn't that true that Mr. Wool said, "I will not let you interview my client"?

A. Yes, he did.

Q And, unbeknown to him, you already had, in effect, because you got answers from him?

MR. O'NEILL. Object. The facts speak for themselves. It is argumentative.

MR. ANOLIK. It is a hearing. I am trying to probe this.

THE COURT. It doesn't make any difference. I think I understand the situation.

MR. ANOLIK. Very well, your Honor.

REDIRECT EXAMINATION

Q (By Mr. O'Neill) Were there any ground rules?

A. No.

MR. O'NEILL. Nothing further, your Honor.

MR. ANOLIK. I think I made my position clear, your Honor.

THE COURT. All right. Thank you, Mr. Axten.

MR. O'NEILL. We have Agent Playford who accompanied Agent Kallstrom on most of the interviews. He is available if someone wishes to call him as a witness. We believe he would testify along the line of Agent Kallstrom. His testimony would be duplication.

MR. ANOLIK. In view of the representation of the United States Attorney, we see no reason to call him.

THE COURT. All right. Anything further you wish to introduce in connection with this matter, Mr. O'Neill?

MR. O'NEILL. I don't believe so, your Honor.

THE COURT. Anything further you wish to introduce, Mr. Anolik?

MR. ANOLIK. Well, your Honor, I would like, very briefly, to put Mr. Falcone on the stand.

THE COURT. All right, you may do so.

MR. ANOLIK. I understand it is only in connection with this hearing?

THE COURT. The Court so understands it, Mr. Anolik.

JOSEPH FALCONE, Sworn

DIRECT EXAMINATION

Q (By Mr. Anolik) Mr. Falcone, you heard the testimony of Agent Kallstrom, did you not?

A. Yes.

Q And, also the testimony of Agent Axten?

A. Yes.

Q Now, when Agent Kallstrom interviewed you, did you believe you had to answer his questions?

A. Yes.

Q He showed you a badge and identification?

A. Yes.

Q And, did he ever tell you that you did not have to answer his questions, you could have a lawyer?

A. No.

MR. ANOLIK. Your Honor, I will withdraw that. That is conceded, anyway.

Q (By Mr. Anolik) Mr. Faloone, now you were once a complainant to the F.B.I., is that correct?

A. Yes.

Q Other than that one occasion, had you ever been interviewed by an F.B.I. agent, to your knowledge?

A. Not that I remember.

MR. ANOLIK. No further questions, your Honor.

CROSS EXAMINATION

Q (By Mr. O'Neill) Mr. Falcone, I take it Mr. Kallstrom did not, in any way, attempt to pressure you in his attempt to get you to answer questions?

A. No.

Q He asked you questions much the same way you and I are?

A. Yes.

REDIRECT EXAMINATION

Q (By Mr. Anolik) He never told you it was a criminal investigation?

A. No, sir.

MR. ANOLIK. No further questions.

THE COURT. You may step down, Mr. Falcone.

MR. FALCONE. Thank you.

MR. ANOLIK. I call Mr. Curreri.

JOSEPH R. CURRERI, Sworn

DIRECT EXAMINATION

Q (By Mr. Anolik) Mr. Curreri, you heard the testimony of Agent Kallstrom with respect to your interview?

A. I did.

Q Is it not a fact that you did not know specifically that that was a criminal investigation?

A. I did not know.

MR. ANOLIK. May I have Exhibit "1", please?

MR. O'NEILL. I think it was offered and admitted, your Honor.

THE COURT. I don't have it.

MR. ANOLIK. That is the Miranda waiver, your Honor.

THE COURT. I know what it is, but I don't have it. How about Agent Kallstrom, did he take it with him?

MR. O'NEILL. I don't believe so, your Honor. I will leave the courtroom and inquire.

MR. ANOLIK. I don't think he would have.

THE COURT. It could have inadvertently got in his files. That is what happened.

MR. O'NEILL. We got it returned to us, your Honor.

THE COURT. Has that been admitted?

MR. O'NEILL. Yes.

MR. ANOLIK. You can take a look.

THE COURT. That is right.

Q (By Mr. Anolik) I show you Government's Exhibit "1" in evidence and ask you, do you recollect was this ever read to you?

A. No, it was not.

Q Did you know what you were signing then?

A. No, I did not at that time.

Q What were the circumstances under which you signed that?

A. Well, I was interviewed voluntarily and when it was done, it was handed to me and filled out by Mr. Kallstrom, I believe, and he told me it was a formality of your voluntary appearance.

Q But this was given to you after your interview?

A. Right.

Q Not before?

A. No.

MR. ANOLIK. No further questions, your Honor.

CROSS EXAMINATION.

Q (By Mr. O'Neill) Mr. Curreri, it is your testimony under oath today, you didn't read that form?

A. I did not.

Q What line of business are you in? You are in business, are you?

A. Yes.

Q You deal with papers all the time?

A. Some times.

Q Do you usually sign papers without reading them?

A. Not very often, but in this circumstance it was very unusual. Mr. Kallstrom and I had gotten very friendly. He was very solicitous on many occasions. He said that day it was a formality, just sign it, and I wanted to get out of there, more than anything else; very foolishly on my part, obviously.

Q It is your testimony, under oath, he did not read this to you?

A. Yes.

MR. NOLIK. He testified to his best recollection, your Honor.

THE COURT. The record will speak, as far as that is concerned. We'll allow this examination.

Q (By Mr. O'Neill) Mr. Curreri, were you, on any other occasion, interviewed by the F.B.I.?

A. No.

Q Are you aware of any civil investigations that the F.B.I. conducts?

A. No.

Q I take it then, when they were interviewing you, you assumed this was in connection with some type of a criminal investigation?

A. I assumed it was something relative to Alburg, because Mr. Kallstrom had been in the office on other occasions and we had gotten very friendly, and he was in for Alburg more than anything else.

Q Had you communicated with Mr. Falcone with respect to Mr. Falcone and Mr. Wool being up in Burlington at a bankruptcy hearing and met with Agent Axten?

A. I didn't know they were here.

Q You don't know that?

A. No.

Q It is your testimony, under oath, you signed this document--

MR. ANOLIK. I object to "under oath". It is an intimidating type of question and I object to it.

THE COURT. Proceed, Mr. O'Neill.

Q (By Mr. O'Neill) It is your testimony here, under oath, you signed this document without reading it, is that right?

A. I did.

Q And further, your testimony is that it was not read to you?

A. It was not read to me.

Q I take it this is your signature down here where it says "signed"?

A. It is.

Q When did you indicate this form was signed, before of after they spoke with you?

A. I believe I signed it after we had the interview.

Q Are you sure about that?

A. Pretty certain.

Q But I take it you could have signed it beforehand?

A. To the best of my knowledge, I signed it after.

Q It is your testimony they interviewed you and gave you this form and asked you to sign it, and you signed it, is that right?

A. Yes.

MR. O'NEILL. No further questions of Mr. Curreri.

REDIRECT EXAMINATION

Q (By Mr. Anolik) Had you been interviewed on other occasions by Mr. Kallstrom?

A. Mr. Kallstrom had been down to the office on several occasions.

Q Had he spoken to you?

A. He had spoken to me and introduced himself as of the F.B.I.

Q And, he asked you questions, did he not?

A. Yes, he asked questions.

Q And, you answered those questions?

A. Yes.

Q Did he ever give you a form previous to this time?

A. Never did.

Q Had you ever signed a form like this in your life?

A. Never had; didn't know what it was about.

Q If that had been read to you and explained to you, is it not a fact you would have read it?

A. I definitely would.

MR. ANOLIK. I have no further questions.

RECROSS EXAMINATION

Q (By Mr. O'Neill) Mr. Curreri, I take it the statement you gave after signing this, or before, based on your testimony, that the statements you gave were voluntary? They weren't forced out of you, or anything like this?

A. They were voluntary.

Q No pressure by the agents to induce you to talk, or anything of this sort?

A. No.

REDIRECT EXAMINATION

Q (By Mr. Anolik) When you say voluntary, you are talking you weren't forced to answer, isn't that what you mean?

A. Right. I wasn't forced to answer.

Q But you didn't know you had the right to obtain an attorney?

A. No.

Q Did you know you could cease the interview and get an attorney?

A. No, I didn't.

Q Did you know an attorney could be supplied to you without charge if you couldn't afford one?

A. No, I didn't.

MR. ANOLIK. No further questions.

THE COURT. Anything further, Mr. O'Neill?

MR. O'NEILL. Nothing furhter of Mr. Curreri, your Honor.

THE COURT. All right, you may step down, Mr. Curreri.

MR. ANOLIK. We have nothing further, your Honor

MR. O'NEILL. I would ask leave of the Court to call Agent Kallstrom and Agent Playford at this time, in view of the testimony.

THE COURT. You may do so.

LAWRENCE E. PLAYFORD, Sworn

DIRECT EXMINATION

Q (By Mr. O'Neill) Mr. Playford, may we have your name?

A. Lawrence E. Playford.

Q How are you employed?

A. Special Agent, F.B.I., New York.

Q How long have you been so employed?

A. Approximately thirteen years.

Q Mr. Playford, I show you what is marked as Government's Exhibit "1" here. Have you ever seen that document before?

A. Yes, I have.

Q Is this your signature down here on the bottom, witness line?

A. That is correct, it is.

Q Would you tell us the circumstances under which you signed that document?

A. This was signed at our office in New York. I signed it as a witness after Mr. Joseph R. Curreri had read and signed it himself.

Q Did either you or Agent Kallstrom read the form to him, also?

A. It was read to him, and as I recall the incident, we explained certain parts of it in case he didn't understand it.

Q Do you remember which of you read the form?

A. Agent Kallstrom, I believe.

Q Do you recall which particular part of the document you explained?

A. I believe--if I could just read it a second. All right. I believe, if I recall this thing correctly, the part explained to him, he wasn't waiving any right to stop speaking to us at any time. In other words, this did not

waive his rights entirely. He still maintained those.

Q Even upon signing this, he could still stop talking to you?

A. At any time he wanted.

Q Was an interview conducted of Mr. Curreri?

A. Yes, there was.

Q When was this form, Government's Exhibit "1", presented to him and explained and signed, et cetera?

A. It was presented to him prior to any interview being conducted.

Q Approximately how long would you say Mr. Curreri looked at that form before signing it?

A. Well, we were advising him at 10:30, as the form indicates. He indicated after his signature at 10:33 a.m. he had executed the form.

Q In other words, there is this indication here at 10:30 you advised him of the rights?

A. That is correct, and approximately three minutes later, he signed it. He executed the form.

Q Do you know what time the interview terminated on that date?

A. I would have to make an estimate, if I gave it to you.

Q What is your estimate?

A. The interview probably took a maximum of 45-50 minutes.

Q Did you exert any pressure on Mr. Curreri to get him to answer any questions?

A. No, sir.

Q Was he willing to answer any questions, as far as you could see?

A. Yes, sir.

Q You advised him you were a special agent of the F.B.I.?

A. That is correct, sir.

Q Did you advise him, or did Mr. Kallstrom advise him, in your presence, what the subject matter would be of the interview?

A. Oh, yes, sir.

Q What was Mr. Curreri advised in that respect?

A. We were interested in the operation of the Falcone Dairy; specifically certain credits that were reflected in the books and records of Falcone for 1971.

MR. O'NEILL. Nothing further of this witness, your Honor.

CROSS EXAMINATION

Q (By Mr. Anolik) Mr. Playford, isn't it a fact your interview with this witness started at 9:30 in the morning?

A. No, sir.

Q Wasn't he called down to the F.B.I. office at 9:30?

A. He wasn't called down; he came up.

Q Did he arrive at 9:30 in the morning?

A. No, sir.

Q Do you have a record of when he arrived?

A. Yes, sir, you have it in your hand.

Q This indicates when he arrived?

A. Approximately; considering the elevator upstairs and getting into the room, yes, sir.

Q This indicates within three minutes he already signed this?

A. That is correct.

Q Isn't it a fact it is filled out in someone else's handwriting?

A. Yes, sir.

Q Whose handwriting is that?

A. Agent Kallstrom's.

Q How long did it take to fill that out?

A. A very short time, sir.

Q About two minutes?

A. I would be guessing; yes, sir.

Q So that means he would have, at the most, one minute to digest that and get everything explained to him before he signed it?

A. I am not the one to say that. This was handed to him by Agent Kallstrom. He may very well have put in Mr. Curreri's name, place and so forth prior to handing it to him.

Q You don't recall that?

A. I do not, sir.

Q As a matter of fact, isn't it true that Mr. Curreri didn't sign that at all until after the interview was over?

A. No, sir, that is incorrect.

Q Mr. Kallstrom did tell him, however, this was a criminal investigation, did he not?

A. I believe it was explained to him what it was about.

Q That it was a criminal investigation?

A. I wouldn't use that terminology. I can't speak for Agent Kallstrom.

Q When you give that sort of warning, it is in connection with a criminal investigation?

A. Yes, that would be some indication.

Q When you conduct criminal investigations, you give that warning, isn't that true?

A. Yes sir.

Q That is standard procedure, is it not?

A. Yes, sir.

MR. ANOLIK. No further questions.

REDIRECT EXAMINATION

Q (By Mr. O'Neill) You were present throughout the interview and execution of the form, is that right?

A. That is right.

Q You were not the one, yourself, to fill out the form, I take it?

A. No. I witnessed it, that is all.

MR. O'NEILL. That is all.

MR. ANOLIK. Nothing further, your Honor.

THE COURT. All right, Mr. Playford, that is all.

MR. O'NEILL. I call Agent Kallstrom back, briefly.

THE COURT. Send in Mr. Kallstrom.

JAMES KALLSTROM was recalled to the stand by the Government in rebuttal.

DIRECT EXAMINATION

Q (By Mr. O'Neill) Could we have your name, sir?

A. James Kallstrom.

Q Directing your attention to the interview of Joseph Falcone--excuse me--Joseph Curreri, you previously testified to on January 9, 1975, I show you Government's Exhibit "1". What portion of this form did you, yourself, fill out?

A. I filled it all out except for his signature. I couldn't swear to the date on here. I don't know if it is mine.

Q With the exception of that, and, of course, Agent Playford's signature, you, basically, filled it out?

A. I did.

Q Did you read the form over to Mr. Curreri before giving it to him?

A. I did.

Q Were there any explanations in connection with that?

A. He stated to me he understood it.

Q Did you give it to Mr. Curreri to look at himself?

A. I did.

Q Approximately how long did he look it over?

A. I'd say, a minute or two.

Q When did Mr. Curreri execute this form in relationship to when you interviewed him?

A. Prior to us interviewing him.

Q What did you indicate to Mr. Curreri was the subject matter of your interview?

A. His participation in the Alburg Creamery and his association with Joseph Falcone.

Q Was Mr. Curreri willing to speak with you?

A. He was.

Q Did you use any trick or artifice to get him to speak with you?

A. No, I did not.

MR. O'NEILL. Nothing further, your Honor.

CROSS EXAMINATION

Q (By Mr. Anolik) Mr. Kallstrom, do you know what time Mr. Curreri arrived at your office that day?

A. It was in the morning.

Q About 9:30?

A. I couldn't say. I think it was probably later than that.

Q Wasn't there some general conversation before the formal

interview started?

A. "Good morning; how are you," words to that effect, probably.

Q Now, did the interview start with the signing of this document? Is that what you are saying?

A. It would start after this document was signed. I felt in my mind he understood what it was.

Q In other words, was there any specific area you explained to him, or did he just understand it pretty well?

A. I don't recall him asking for any explanation of the form.

Q You have no notes of this anyway, do you?

A. Of this particular---

Q Yes, other than your report?

A. No, I do not, sir.

Q Did you make any notes, by the way, in the field?

A. Well, concerning my report of his interview, I did make notes of that.

Q You typed them up, is that correct?

A. That is correct.

Q And, you destroyed those notes, is that correct?

A. That is correct.

Q Those are not in existence any more?

A. No, they are not.

MR. ANOLIK. I have no further questions.

REDIRECT EXAMINATION

Q (By Mr. O'Neill) Mr. Kallstrom, do you normally keep your notes around?

A. I do not.

MR. O'NEILL. Nothing further, your Honor.

THE COURT. All right, Mr. Kallstrom.

MR. KALLSTROM. Thank you, your Honor.

MR. ANOLIK. Nothing further.

MR. O'NEILL. That is all we have, your Honor.

THE COURT. Mr. Anolik, any argument?

MR. ANOLIK. Yes, your Honor, if I may. I would submit, first of all, that the testimony of Agent Axten, the Case Agent, is that he communicated to his headquarters that this was a criminal investigation. Now we have heard two agents testify--Agent Playford and Agent Axten state that where there is a criminal investigation, it is their practice to give the Miranda warnings. Agent Kallstrom stated that he was never informed this was a criminal investigation, and, therefore, he saw no reason to give any warnings to Mr. Falcone, and he did not give any warnings to Mr. Falcone, which would seem to be contradicted, certainly, by Agent Axten. So there was, obviously, your Honor, some slip-up, or some omission, your Honor, which should not be charged against the defendants, and I don't think the Government has a right to benefit by

such slip-ups, your Honor.

With respect to Mr. Curreri, I submit, your Honor, that there seems to be some divergence in the testimony of Agent Playford and Agent Kallstrom with respect to the circumstances under which the Miranda waiver was allegedly signed. Certainly, your Honor it seems inconceivable to me that could have been filled out by Agent Kallstrom, could have been read to him, explained to him in a matter of three minutes. It defies credibility that it could have occurred in that period of time. I submit, your Honor, that it is more likely that the recollection of Mr. Curreri that it was given to him to sign as an afterthought if, perhaps, more likely, because of the fact this was the only interviww that took place at F. B.I. headquarters, and it seems to me, your Honor, that at this juncture they may have felt, well, perhaps we ought to get him to sign something. I don't see why, your Honor, this should suddenly be an offer of a Miranda waiver when Mr. Kallstrom said they had no idea it was a criminal investigation to begin with, of Mr. Curreri, and Agent Playford said, "Oh, yes, it is my recollection it was a criminal investigation, of course. That is the only time we give Miranda warnings". There seems to be a lot of diversity of opinion here, your Honor, and I submit the Government--I am only talking about these statements, I will get to the one with Mr. Wool presently in a moment.

With respect to these statements, I think

52

clearly there was no compliance with the fundamental fairness which, I think, this Court should require the Government to meet with respect to interviews under these circumstances, and certainly Agent Axten was more than candid, as was Agent Playford when he said when they go to have interviews with someone with respect to possible criminality, they warn them of his rights.

With respect to the interview at which Mr. W[illegible] was present, your Honor, and your Honor has a copy of Exhibit "A", it is clear that Mr. Wool told Agent Axten "I don't want my client interviewed". Mr. Axten admits he did not tell Mr. Wool, or Mr. Falcone, that "anything audible I hear from your client, I will use against him". I think he had an obligation to tell him that, your Honor, if that is what is going to go on; otherwise, I think you are really not being candid with counsel, and when counsel tells his client to shut up, he doesn't expect the utterances of his client to clarify something he is saying to be used as admissions against him, after he explains to the agent "Look, I don't want to be interviewed," and it just doesn't seem right, your Honor, that suddenly this should come up some, shall I say, slip-up, because there was apparently a lack of communication between the agent and counsel. I don't think the agent, your Honor---

THE COURT. What do you mean lack of communication between agent and counsel?

MR. ANOLIK. To this extent, the agent should have stopped the interview immediately and say "Look, I can hear what your client is saying and can use it against him".

THE COURT. You don't think experienced counsel could do that himself; he had to be told by Mr. Axten, and that he couldn't have told his client he didn't want him to make any statement?

MR. ANOLIK. Your Honor, this is, undoubtedly, in my mind the thrust of what Mr. Axten says; he already told his client that and couldn't control his client, but the point is, your Honor---

THE COURT. I think it is most unusual argument, Mr. Anolik. With counsel present, this is what you expect when counsel is there to safeguard the rights of his client.

MR. ANOLIK. I have had any number of interviews, your Honor, with Government agents and employees where clients have given me information with the understanding was that counsel alone would discuss matters, so it would not be any statement by the client, and I have never known a breach of that confidence, your Honor. So, I am a little bit nonplused, frankly, by the fact they would use this under the circumstances.

THE COURT. How many times after you made

these statements do your clients volunteer information?

MR. ANOLIK. Your Honor, any number of times clients are telling audibly what the situation is. I ask them "Do you know anything about this". They talk to me, but I have not had a situation where the United States Attorney, or anyone else, used such statement, obviously made to aid the counsel in the interview to be used against the client.

THE COURT. Suppose he indicated this to counsel, and counsel indicated it to the agent?

MR. ANOLIK. It couldn't be used, under the circumstances.

THE COURT. Why not?

MR. ANOLIK. Because it was a conversation with counsel and not the defendant that is being used as a direct admission.

THE COURT. I mean, under these circumstances.

MR. ANOLIK. I think the tenor of the interview, your Honor, was that it would not be used. That was my understanding. A number of years ago I had occasion to argue Spano against New York, in the Supreme Court, 360 U.S., your Honor, and that case counsel advised his client not to talk to the district attorney and advised the district attorney not to talk to counsel. Nevertheless, the district attorney did talk with the client and brought in a friend of his who happened to be a police officer to watch him, so to speak, and said, "It is

perfectly okay to talk with the D.A.; forget what your counsel said". I realize it is not on all fours, your Honor.

THE COURT. Was counsel present?

MR. ANOLIK. No, he was not present, your Honor, but there was an agreement; that is what I am trying to get at; that there was nothing the defendant said would be used, and we maintain while it is not on all fours with Spano, the thrust of that case where there is an agreement between the agent of the United States and defense counsel, that what the client says will not be used, or shall not be deemed to be interviewed. They are not using something said, particularly, when they don't tell him they are using it. This came as a complete surprise to Mr. Wool and my client, your Honor, and that is why we are asking for its suppression.

THE COURT. All right. Mr. O'Neill.

MR. O'NEILL. Very briefly, your Honor, true, there was some slippage between Agent Axten and the New York agent as to the understanding whether or not these individuals were defendants.

THE COURT. What?

MR. O'NEILL. Some slippage. Agent Axten clearly understood those two individuals were potential defendants, and we want to make that clear by bringing it out ourselves. The New York agent didn't realize it. We realize this is on no particular significance since the interviews of Mr.

Falcone were voluntary; they were noncustodial.

As to the matter with respect to Mr. Curreri, to suggest that the agent, after an interview, handed him this form, what would the agent have done if he didn't sign it? They would look like a pair of fools after the fact they handed him this f[illegible] and he didn't sign it. We suggest there is no divergence of testimony. It makes no sense.

THE COURT. You mean between what Mr. Curreri says and the agent?

MR. O'NEILL. There is a divergence.

THE COURT. They are diametrically opposed, the two statements. Isn't that pretty much a question of credibility?

MR. O'NEILL. I agree. That is a misstatement on my part. We think the credibility in this situation is such there is no question that the agents have the correct understanding with respect to it. In any event, there is no question the statement is voluntary; noncustodial whatever. Mr. Anolik may have a concept of fundamental fairness. We are aware the Court will follow the law, and that is all we ask.

With respect to the statement of Mr. Wool, we can't conceive, your Honor, that Mr. Wool could be foolish enough, under the circumstances, to think Mr. Falcone was talking in his ear. It is very clear from the statement of Agent Axten what occurred. Mr. Falcone, basically, couldn't keep his

57
58

mouth shut. He had to go ahead and make statements. Mr. Wool is a very capable attorney, and, obviously, if he had decided, he could have physically stopped his client, or could have grabbed ahold of him and said, "No, don't say anything". If he wants to make statements that is his right. The Supreme Court made it extremely clear in Miranda they did not require to stop voluntary statements. They haven't stated when one volunteers an information the police officer says "Stop, here are your rights". We suggest that is absolutely silly.

MR. ANOLIK. Miranda, as I understand it, talked about voluntariness of statements, not voluntary. No one denies this was not coerced, in the sense of physical coercion. We are asking the Court to consider this in the context of not being told it is a criminal investigation, your Honor.

Now the Government has not conceded they should have been told that, and they weren't.

MR. O'NEILL. Obviously, we don't concede it; secondly, Agent Axten told Mr. Wool in Mr. Falcone's presence it was a criminal investigation. We contend it was both voluntary and volunteered.

MR. ANOLIK. We are talking about the ones not in Mr. Wool's presence.

THE COURT. I don't understand that to be a concession on the part of the Government.

MR. ANOLIK. I thought they said there was a

slip-up; that the agent should have been advised it was a criminal investigation.

THE COURT. In other words, counsel apparently attach any significance to the fact the interviews with Mr. Falcone, the initial interviews by Agent Kallstrom were in October and early December, as my notes indicate, and the interview with Mr. Axten and Mr. Falcone was antedated or postdated to those; that was on December 9, 1974, and after that interview the next interview, as I get it, was Mr. Curreri's interview in January, I believe.

MR. ANOLIK. January 9th, your Honor.

MR. O'NEILL. That is the correct sequence, as I understand it.

THE COURT. Nobody attached significance to these dates, but it seems to the Court that well after, quite possibly after the date of December 9, 1974, there could have been specific instructions this was a criminal prosecution. It might not have been, prior to that time.

MR. ANOLIK. Except Agent Axten conceded all interviews he had in mind were with reference to a criminal investigation.

THE COURT. I understand that is what Mr. Axten said.

MR. ANOLIK. But I don't see where there is any evidence it was imparted to Mr. Kallstrom at that time.

THE COURT. That is true.

MR. ANOLIK. But, apparently he imparted it to Albany and they did not transmit it down below. At least, he says he doesn't remember.

THE COURT. Anything further.

MR. O'NEILL. Our contention, among other things, in addition to our contention to the various forms and waivers, our contention is there would be no requirement even if the agent in all instances had known that this was a criminal investigation. There was no requirement, with specific focus on these individuals, they be given Miranda warnings; there was no custodian information of any form.

MR. ANOLIK. If an agent calls or invites someone to the F.B.I. headquarters, that is custodial in the sense, at least, of Miranda, your Honor. When you are told to come to police headquarters, F.B.I. headquarters, you are not told you don't have to come there. They gave him his rights, supposedly, some time after he was there. Your Honor, you are in their hands then, so to speak, when you are there. When an agent comes up unannounced at your place of business, an F.B.I. agent, and says, "We want to talk to you without giving you an idea of wht it is about," frankly, we submit, that is really pulling the wool over someone's eyes. We submit that under such cases as Meshrosh against United States, your Honor, and cases dealing with fundamental fairness by agents of the

Government, that it is unbecoming of the United States Government to obtain admissions under these circumstances, and that is what we are addressing ourselves to, your Honor.

As to the strict interpretation of Miranda, we are well aware of what Miranda holds. We are talking about the circumstances of this case.

THE COURT. What do you say about the cases cited by the Government in its brief? Don't they touch in this area?

MR. ANOLIK. The cases cited by the Government in its brief, Masullo and cases of that sort, your Honor, those cases are not dispositive of the issue here because the Government was not addressing itself to the testimony adduced here. We have now had the adduction of testimony from an agent, a case agent, saying that he was conducting, or wanted to conduct criminal investigations; that he notified his headquarters of that fact. We now have Agent Kallstrom saying he was not aware of it. We have Agent Playford saying he was aware of it. Now we have, apparently, a divergence, your Honor, of opinion, but, certainly, a slip-up with respect to Agent Kallstrom, because he says he wasn't aware it was a criminal investigation at all, and, your Honor, the fact that one of the agents slips up comes within the purview of another case which, coincidentally, I argued in the United States Supreme Court, Santobello against New York, where the United States

Supreme Court said with respect to the Government "One hand must know what the other hand is doing," and it is no defense to say one particular agent did not know what the other agent was doing. There is no defense to the Government. It is a single entity.

THE COURT. Yes, we have that in this court, and apparently the Second Circuit agrees with you in a different context, I must say.

MR. ANOLIK. I understand, your Honor.

THE COURT. Let me ask a question. My notes don't indicate. Was Agent Playford present at all interviews or only the interview with Mr. Curreri?

MR. O'NEILL. I think all interviews with the exception of the interview of Mr. Falcone on October 1, 1974.

THE COURT. But he was there December 4th?

MR. O'NEILL. I believe so. If the Court will give me leave, I will look at the form.

MR. ANOLIK. It is on the form, your Honor. We assume that is true, your Honor.

THE COURT. Which form? There is nothing in evidence.

MR. ANOLIK. Your Honor, I submitted these in evidence, your Honor, for the purpose of this hearing, only unless the United States Attorney has copies, because we will

have to arrange to get copies made, your Honor. These are the only ones I have, your Honor.

THE COURT. Have them marked, and for purposes of this hearing, I will look at them overnight.

MR. ANOLIK. Then with your permission, your Honor, unless the Clerk wants to do that, the statement of August 29, 1974 with respect to Joseph Falcone at which allegedly Agent Kallstrom and Agent Playford were present, your Honor; a statement, your Honor with respect to Joseph Falcone; when I say "statement," I mean interview.

THE COURT. I understand.

MR. ANOLIK. December 4, 1974 at which, allegedly, Agents Kallstrom and Playford were present, your Honor.

DEPUTY CLERK CURRAN. That one is Defendants' "C", the other one is "B".

MR. ANOLIK. A statement, or interview, your Honor, of Joseph Curreri, and I don't know if the Government introduced that.

THE COURT. I am not interested in that.

MR. ANOLIK. The other one would be October 1, 1974, an interview of Joseph Falcone, apparently with only Agent Kallstrom present.

DEPUTY CLERK CURRAN. That is "D".

THE COURT. Then "B," "C" and "D" are admitted

for purposes of this hearing. You have no objection?

MR. O'NEILL. None whatsoever, your Honor.

(Defendants' Exhibits "B," "C" and "D" were received in evidence.)

THE COURT. Anything further?

MR. O'NEILL. One brief point. I think the fact maybe the defense and Mr. Anolik view them and I know I view them differently from the way he does--what we have in mind, specifically, was not elucidated clearly was how Mr. Curreri got to the F.B.I. headquarters. The question is Mr. Anolik keeps using the terms "instructed down" and "invited down". There was no testimony on that part of it. The reason I am not clear is that Mr. Curreri wanted to come down and accommodate himself. I don't ask the Court to consider that it is a part of the record, but the Court should bear that in mind.

THE COURT. We don't attach any weight as to why or how he got there, frankly. I need Plaintiffs' "1". The Court will reserve its decision and make the decision first thing in the morning. I will ask counsel to be here tomorrow morning at nine o'clock and we'll take up any other pretrial matters at that time.

MR. ANOLIK. Primarily, your Honor, if we might address ourselves to it, your Honor, with your approval, is the question of stipulations. I think there is a lot of evidence---

THE COURT. We'll take those at nine o'clock, Mr. Anolik.

MR. ANOLIK. In chambers, or in the courtroom, your Honor?

THE COURT. I don't know. It depends on what is the easiest way. With the number of people, it will probably be in the courtroom and the jury in the jury box, so we will have it in the courtroom, I imagine. Also, Mr. Anolik, cases you do cite to the Court, I want you to provide them in written form with such portions of the case language that you want the Court to specifically consider. You may be familiar with them because you argued the cases, but the Court is not that familiar with those cases, and, frankly, it doesn't do much for me to receive the case and the citation without additional elaboration.

MR. ANOLIK. I can appreciate that. The information causing the citation of those particular caees did not come forward until---

THE COURT. I appreciate that fact, but it doesn't do any good to have you recite them without more to it. So if you think they will be significant, I suggest you prepare them in written form so I will have the opportunity to review the language you are referring to. I am, frankly, not familiar with the two you specifically cited in connection with this hearing. We will stand in recess until 9:00 in the morning.

C E R T I F I C A T E

I, Francis A. Cumming, United States Court Reporter, United States District Court, District of Vermont, hereby certify that the foregoing is a true and complete record of my verbatim stenotype notes of the hearing on motions to suppress in re: United States of America v Joseph Falcone and Joseph Curreri, Criminal Action File Number 75-37, before the Honorable Albert W. Coffrin, U.S.D.J., at Burlington, Vermont, February 4, 1976.

Francis A. Cumming

Barre, Vermont
May 1, 1976.

10. Parizo, Loris
11. Stebbins, Randall
12. Ringey, Barbara

(The Court conducted a limited voir dire of the above twelve jurors and read the indictment.)

THE COURT. Now that brings us to twelve o'clock, ladies and gentlemen, and without going any further at this time we will take our noon recess. The twelve ladies and gentlemen who are in the box, when you return to this room, will return to the jury box. The rest of you ladies and gentlemen, please take seats in the rear of the room as you are doing at the present time, and since we are now into this matter, and you know what the indictment contains, I will ask that none of you discuss this matter with anybody else during the noon recess. We will stand in recess and resume at 1:30.

(Court recessed from 12:00 - 1:35 p.m.)

(In chambers at 1:35 p.m. with all counsel, defendants, and Judge Charles J. Marro, Bankruptcy Court, present.)

THE COURT. Do you want to advise the Court, Mr. Cook?

MR. COOK. I think Mr. O'Neill will. The admissibility of these documents will be stipulated to by the defense.

MR. O'NEILL. I have various documents from the file of Judge Marro. I would, at this time, go through

these documents and enumerate which they are. They are not marked at this time. The first ducument is the Involuntary Petition For Bankruptcy, with a date stamped on the bottom by the Clerk in Bankruptcy, December 10, 1973.

THE COURT. Have you seen these, Mr. Anolik? Do you want to look over his shoulder? Do it in some way, as he goes along.

MR. ANOLIK. Your Honor, I assume that you will ultimately view these with reference to relevance. That is the only problem I have here, Judge.

THE COURT. I assume so.

MR. ANOLIK. In other words, I am willing to stipulate that the Bankruptcy Judge would testify that these are documents filed in the regular course of business, and that they were received by him in the bankruptcy case, but I think your Honor would ultimately have to determine whether they are relevant to the criminal prosecution.

THE COURT. Upon objection, I will rule on whether or not they are relevant.

MR. ANOLIK. There is no need for the Judge remaining here, by conceding they were all filed in the regular course of the proceeding in bankruptcy.

THE COURT. Did you want more than that?

MR. O'NEILL. Here is our suggestion as to approach. Perhaps the defendants are willing to stipulate as

to the admissibility of these documents with the exception of the stipulation as to relevancy, which the Court can then rule on. In other words, that would take care of any other claims to the documents.

MR. ANOLIK. The point is, is there any other statement of the defendants?

MR. O'NEILL. As we go along, there is not a statement, but I want you to look at it particularly close.

MR. ANOLIK. Any allegations in the bankruptcy proceeding as to what they did, or didn't do, other than propriety?

MR. O'NEILL. I don't think so. We'll look through each individual document.

THE COURT. I would like to get the concession as per each document as we go along.

JUDGE MARRO. If it will help any, I will testify. I am willing to be sworn, as far as that goes, that every document in the file that is stamped by Susan C. Tomlin, as Clerk, or by Phyllis M. Davis, as Clerk, were received in my office in the regular procedure in the administration of that bankruptcy case.

MR. ANOLIK. Then we are willing to stipulate to the truth of this testimony, and no problem there at all, Judge. The only point, so far as evidence in the criminal prosecution which is going on here, there may be certain items

that we would feel is not relevant. For example, they may , self-serving, or hearsay, or something of that sort.

THE COURT. We can admit them, if you agree, subject to any exception to relevance or materiality, and if we get into problems, we'll have to bring Judge Marro back

MR. ANOLIK. There is no problem.

THE COURT. We don't want to, but if we had to, we could.

MR. ANOLIK. No problem; as long as we reserve those objections, there is no problem at all. That is about all the Judge could testify to is that they were received. Only you can rule on the relevance and materiality, your Honor.

THE COURT. Is that satisfactory, Mr. O'Neill?

MR. O'NEILL. I believe so, your Honor.

THE COURT. Indicate for the record the other documents you are going to offer in this regard.

MR. O'NEILL. The next document, your Honor, is a Motion to Amend the Original Petition for Involuntary Bankruptcy, filed by Yankee Milk, Inc., filed January 19, 1974. The next document, your Honor, is a document dated, filed January 22, 1974, at the top of which is the caption "Order Directing Bankrupt to File Schedules and Statement of Affairs," and it is signed by Judge Marro.

THE COURT. And, dated?

MR. O'NEILL. January 22, 1974, your Honor. The next document is an Order for Examination of Stockholders and Directors and Officers of Bankrupt and First Meeting of Creditors, and dated, filed January 29, 1974. It has attached to it various receipts by certified mail indicating that it was sent to various individuals, among them Mr. Joseph Palcone.

The next document, your Honor, is captioned "Order for First Meeting of Creditors," and fixing time for filing objections to discharge, et cetera. It continues on. It is dated January 29, 1974.

The next document is entitled Proceeding Memo in re: Alburg Creamery, Inc. and filed February 14, 1974.

JUDGE MARRO. That document, I might state for benefit of the parties, is a document that has been reconstructed from the testimony that was taken, and those are my notes as to the proceeding.

MR. O'NEILL. As far as I know so far, this is the only one that might contain statements of the defendants in connection with---

MR. ANOLIK. The nature of the objection, among others, Judge, would be that this is in the nature of a compulsory appearance. They are directed to appear.

JUDGE MARRO. The officers are supposed to appear.

MR. ANOLIK. Not that focus was made of

criminality. That I know. So they would not be a waiver of any rights of self-incrimination freedom to Marchetti v United States and Grosso v United States, 390 U.S. Reporter. That was the so-called gambling tax stamp case where they were directed to file certain criminatory information, and the Supreme Court ultimately ruled since it was compulsory, this could not be used against them.

THE COURT. Marchetti and Grosso, I think, would be distinguishable.

MR. ANOLIK. It might be.

THE COURT. We spent time with those two cases.

MR. O'NEILL The purpose of our offering this particular document is as to the appearance of Mr. Falcone on that date in a bankruptcy related hearing held there. I believe he testified on that day. We don't know what his testimony was, nor is it incorporated here.

THE COURT. More-or-less to indicate he was there and did testify, is that right?

MR. O'NEILL. That is all, your Honor, to indicate his presence, and also the fact Mr. Schmucker was made Trustee on that day. The document doesn't contain any other statement by Mr. Falcone.

MR. ANOLIK. No problem.

MR. O'NEILL. The other statement is Statement

of Affairs which is dated filed February 14, 1974 with respect to Alburg Creamery, Inc.

JUDGE MARRO. It is at the tail end.

MR. O'NEILL. The petition is at the beginning and the Statement of Affairs is at the end, as Judge Marro indicated, and we would seek to include this entire document.

MR. ANOLIK. That is the oath they took, one of the counts of the indictment?

MR. O'NEILL. Yes.

MR. ANOLIK. Of course, we dispute there was any knowing falsehood, your Honor.

MR. O'NEILL. Do you want to look that one over? (The document was handed to Mr. Anolik.) Judge Marro, did you have the Falcone books at one time?

JUDGE MARRO. I don't think I had the Falcone books. I think the trustee may have had them.

MR. O'NEILL. They didn't pass through your hands?

JUDGE MARRO. No, I never took the pains of looking them over. That is the trustee's job.

MR. O'NEILL. Did you pass them on to the trustee? That is my only question.

JUDGE MARRO. I don't think so.

THE COURT. Any problems with the last document?

MR. ANOLIK. I don't think so, except we dispute any criminal intent.

THE COURT. That goes to the defense, I am sure. Anything else, Mr. O'Neill?

MR. O'NEILL. I don't believe so, your Honor. If we find there is something else at a later time, we may find ourselves in a position of asking Judge Marro to come back, but I believe those are the documents that will be necessary.

THE COURT. Barring some unexpected development, Judge, I guess you are a free man.

JUDGE MARRO. I appreciate it. If I have to come back, I would appreciate it if I don't have to come back tomorrow, because I have hearings in Montpelier all day.

THE COURT. You can blame them, if you do.

JUDGE MARRO. I will be available Friday or Monday. Did you want these records left here?

THE COURT. Certainly the ones that have been identified.

JUDGE MARRO. I am wondering if they want others. I just as soon leave them in the custody of someone.

MR. O'NEILL. It would be better if they were left here in the custody of someone.

JUDGE MARRO. I don't need them tomorrow or the next day.

THE COURT. Leave them in the custody of the Clerk.

JUDGE MARRO. Okay, I will leave them with Ed Trudell so they are available to both parties.

MR. ANOLIK. That is fine; thank you, Judge.

(End of stipulation on bankruptcy documents in chambers.)

(In the courtroom at 1:50 p.m.)

THE COURT. Ladies and Gentlemen. We had our first delay for certain legal matters. We have disposed of those, and we will go back to impaneling the jury.

(Impaneling of the jury continued until 3:13 p.m. when a jury and two alternates were duly impaneled.)

THE COURT. The jury for this case is now impaneled with Mr. Smith and Mr. Stuyck as the alternates. The hour is such, and we do still have some legal matters that we have to consider, so that I am going to excuse the panel--fourteen of you in the box--for this evening and ask you to return tomorrow morning at 9:30.

Now we are into the trial of this case with the jury impaneled, and again, I want to stress that I am asking you, and I expect you to follow this instruction, please do not discuss the case with anybody, at any time, until it is over, and then not then up to the time you go into the jury room; that you don't read anything about it, and should there

be any television or radio publicity, that you don't listen to it. The ladies and gentlemen in the rear of the room and not selected in this case will be excused, subject to call, which means that the Clerk's office will be in touch with you as to the next time you are expected to attend court here. You, ladies and gentlemen, who are in the jury box are excused until tomorrow morning at 9:30; the balance of the panel is excused, subject to call. We'll take a short recess and go forward.

(Court recessed at 3:15 p.m.)

(February 5, 1976; 9:15 a.m. in the courtroom without the jury.)

THE COURT. Good morning. The Court has had the opportunity to examine Government's Exhibit "1" and Defendants' Exhibits "A," "B," "C," and "D" in this matter. The Court, at this time, rules that the statement of Mr. Curreri taken on January 9, 1975 is voluntary, and the motion to suppress that particular statement is denied.

Now, insofar as the statement of Mr. Falcone which was made in the presence of his attorney at the time of the discussion between the attorney and Mr. Axton, at which Mr. Falcone was present, the Court rules that the statement was voluntary, and defendant's motion to suppress is denied.

The Court feels a somewhat more difficult problem, perhaps, is presented to the Court as far as the

interview on August 30th, or August 29, 1974, December 4, 1974, and October 1, 1974, as presented, but the Court is satisfied that under the circumstances of this matter as presented to the Court by way of evidence, that these statements were voluntary, and the motion to suppress these statements is denied.

The Court, in making the ruling particularly with regard to statements identified as Defendants' "B," "C," and "D", the Court relies substantially on U.S. v Hall, 421 F.2d 540, which is another one of Judge Friendly's excellent opinions, and while that is not exactly on point, we feel it is sufficiently parallel to the factual situation in this matter to provide guidance in making our decision.

My law clerk has also examined, Mr. Anolik, the Spano case and Santobello case that you cited yesterday in oral argument, but I am frank to admit I have not had the opportunity to read these cases at this time. My law clerk advises me, however, that the Spano case involves a psychologically coerced confession, and that does not seem applicable here, and that Santobello involved the enforceability of a prosecutor's plea agreement, and certainly there was no plea agreement here. The Kerr case is a search and seizure case. This Court is, of course, anxious that fundamental fairness be applied to all defendants. Normally, fundamental fairness is a due process argument, but in any event, the Court

is satisfied, as far as these statements are concerned, and for that reason, in all respects, denies your motion to suppress.

Now, I will have to keep these on hand, of course, as part of the record, but I will have the Clerk make photocopies of these for your use at the recess.

MR. ANOLIK. Thank you very much.

THE COURT. All right. Now we have before the Court the possibility of stipulating to some of the evidence in this matter, and the Court of course, is anxious, to the extent possible, to stipulate to such evidence. I have been handed a letter from the Assistant United States Attorney. I have not read it in detail yet, and I am frank to admit I don't know what the significance of the various records are, but have you had a chance to look at the letter?

MR. ANOLIK. Yes, your Honor.

THE COURT. Do you have any difficulty with those?

MR. ANOLIK. Your Honor, the last two paragraphs on Page 2, we may have some problem with because my client advises me that there are some inaccuracies in the grand jury testimony, and with respect to Philip Falivene, we feel that we could not stipulate to the accuracy of that statement.

THE COURT. Well, all right. How about the other items contained in the letter?

THE COURT. Certainly.

Q (By Mr. Anolik) Mr. Laramee, about how much inventory did you keep on the premises of Alburg, or did you keep any for that matter?

A. We didn't keep too much inventory there. We shipped as often as we could. I would think that without crowding the cooler too much, between one hundred fifty to two hundred thousand pounds.

Q That is not considered too much, is that right?

A. No, it is not too large an inventory considering the type of cheese.

Q Mr. Laramee, Mr. Falivene was actually on the premises while Lucille was still in the operation, so to speak, overseeing it, was he not? You know who I am talking about, Mr. Falivene. Remember him?

A. Yes.

Q He was with Lucille Dairy?

A. Right.

Q He wasn't with Falcone?

A. No.

Q He was actually on the premises almost on a regular basis?

A. Yes, he was there every day. Yes, sir.

Q He would choose very often the cheese that he wanted shipped to Lucille, isn't that true?

A. Well, I can't---

Q Or do you know?

A. No, I don't think that is true, sir. He wouldn't choose.

Q Isn't it a fact that Falcone was being shipped from inventory whereas, Lucille was being shipped from active production in many instances?

A. No, I can't say that it was. Whenever we did have an inventory, we always had an inventory for both people.

Q But Falcone did not have an active overseer on the premises, isn't that true?

A. No, because I was there.

Q I understand that, but Lucille did?

A. I can't see where that had anything to do with it, because all cheese shipped out of there, we always picked--if we had any inventory, we shipped out the oldest cheese first regardless of whose cheese it was, sir.

Q You, personally, know that for a fact?

A. Right, sir.

Q What was Falivene's function up there?

A. He, supposedly, had interest in the partnership.

Q But it was a partnership between Lucille Dairy, who had fifty per cent, and Falcone who had fifty per cent, isn't that true?

A. That, I don't know, sir, what their arrangement was.

Q They were two separate dairy companies?

A. Yes, sir.

Q You shipped to different suppliers, isn't that true?

A. Right.

Q Different places?

A. Right.

Q Isn't it a fact that some of the inventory, before Falivene came up there, had the Falcone labels on it? The inventory, I am talking about.

A. The Falcone labels? Yes, there was.

Q So they would have to be shipped to Falcone, wouldn't they?

A. Right.

Q Now your attention was drawn---

MR. ANOLIK. (To Mr. O'Neill) Do you have that exhibit, by the way? Your Honor, there is an exhibit introduced in evidence. I need that, and, apparently, it is not in the courtroom.

THE COURT. Which exhibit is that?

MR. ANOLIK. I don't know the number, but Mr. O'Neill knows the number. He referred the witness to it. I think, perhaps, we ought to keep the exhibits in the courtroom.

THE COURT. Yes.

MR. ANOLIK. I will suggest if the exhibits are not in the courtroom, your Honor, they should be.

MR. O'NEILL. The ones I left upstairs are

basically accounting---

THE COURT. Regardless, we never know when they will come up.

MR. O'NEILL. I can have someone get that exhibit, your Honor, if I may leave the courtroom.

MR. ANOLIK. I will try to ask a ouple of questions, your Honor.

THE COURT. Ask to have all of them brought down. Mr. O'Neill.

MR. ANOLIK. I will wait until Mr. O'Neill gets back, your Honor.

THE COURT. All right, Mr. Anolik.

(Mr. O'Neill left the courtroom and returned.)

Q (By Mr. Anolik) Now, Mr. Laramee, you departed from Alburg in June, was it not?

A. Yes.

Q And, at that time that you departed, you went to work for some other concern. Which concern was that?

A. First, I went for a couple weeks to immigration and then I spent possibly three weeks to four months in Orting, Washington, Mazza Cheese Company.

Q During your relationship with Falcone Dairy, you were not asked to do anything improper, were you?

A. No, sir.

Q There is an exhibit coming down that maybe I can draw your

attention to it, if I can. Do you remember Mr. O'Neill asked you about conversations you had with one of the accountants? I think, perhaps, a Mr. Plante.

A. Yes.

Q Do you remember that question he asked?

A. Yes, sir.

Q And that he showed you certain cost accounting figures? Do you recall that?

A. Yes; he called my attention to it, yes.

Q You, yourself, are not an accountant, are you?

A. No, sir.

Q He indicated, did he not, there was at least, during some months, apparently, you were running at a slight loss per pound? Did you notice that?

A. Yes, he did.

Q Now, you don't know why you were running at a loss, do you?

A. Well, the accountant told me that I should have been getting a little more for my product.

Q In other words, he said the prices ought to be raised, isn't that so?

A. Right.

Q At that time, however, you didn't know whether or not there were considerations of a price freeze that Washington might have imposed?

A. No, sir.

Q Now you didn't know what the price and policy was caused by, isn't that true?

A. No, I wasn't familiar with that at all.

Q You didn't discuss market conditions or competitors' prices?

A. No.

MR. ANOLIK. I am referring particularly, your Honor, and ladies and gentlemen of the jury, and Mr. Laramee, to Exhibit "42" which is in evidence. May I show it to the witness, your Honor. (Mr. Anolik handed the witness a document.) I got an electric shock.

THE COURT. You have to watch that.

Q (By Mr. Anolik) Do you see that?

A. Yes.

Q Does that reflect your recollection?

A. Well, I never saw this any way.

Q You did not see that particular exhibit?

A. No. Apparently, this is Mr. Plante's auditing.

Q That is what I want to specifically ask you. This particular exhibit, you have never seen?

A. No, sir.

Q MR. ANOLIK. Okay. I have no further questions of this witness, your Honor.

THE COURT. Mr. O'Neill, anything further?

MR. O'NEILL. Yes, your Honor.

REDIRECT EXAMINATION

Q (By Mr. O'Neill) Mr. Laramee, who did you consider was your boss there at Alburg Creamery?

A. Now, are you referring prior to 1970 or all the way through?

Q Give it to us all the way through. If different people, say so.

A. All right. From 1965 on, it was Vincent Falcone, the President; Joseph Falcone, Vice President, and they were about the only two that gave me orders.

Q And was this over the entire period of time?

A. Yes, sir.

Q Was there any one of them in particular you dealt with from 1970 on?

A. No, it would come from the office. I took orders from either one of them.

Q What did you know about the operation of Falcone Dairy down in New York?

A. Didn't know a thing, sir.

Q Did you know who their cheese suppliers were, if they had any others?

A. Cheese suppliers, I knew by brand name only because I did package for different---

Q Not the persons they would have been selling to, but did you know if they had any one else they got cheese from?

A. Out of Vermont, yes, sir. Milton.

Q Do you know if they had other sources?

A. When I first started there, yes, the Richmond Coop. and Milton.

Q If they had sources other than those, did you know about them?

A. I wouldn't know about them, sir.

Q Were you ever told by New York that they had to throw out some of your cheese because it was bad?

A. No, I never was told that they had to throw it out.

Q Were you ever told that they were having problems with large quantities of your cheese?

A. No, I never was told that. I was told, occasionally, that we had a little problem, as I said, high acid, but I don't know of any cheese that was thrown out. That, I don't know about.

Q Mr. Laramee, for our understanding, what does the term F.O.B. mean with respect to trucking?

A. F.O.B. means---

Q Free on board?

A. Free on board, yes, sir.

Q Does that mean the cheese wasn't your responsibility after it got on the truck?

A. No, sir.

Q After it got on the truck, who owned the cheese?

A. After it got on the truck it was the company's--the trucking outfit's--responsibility until it got to its destination.

Q When did Alburg no longer own that cheese, when it got on the truck? When it got to New York? When it was put on the truck, or when was it?

A. Well, actually, Alburg owned that cheese until it was sold; until they were paid for it, but as far as the responsibility of Alburg Creamery, I don't feel it was any of our responsibility after it left the plant to take care of the product.

Q When you say it was Alburg's until it was sold, you mean only in terms of accounting principles?

A. Right.

MR. O'NEILL. Nothing further, your Honor.

RECROSS EXAMINATION

Q (By Mr. Anolik) Mr. Laramee, is it not a fact that in June or even before that, there was substantial remodeling going on at the Alburg plant, if you remember?

A. In June? Prior to that, yes, sir. Yes, it was going on through the winter months.

Q Right. As a matter of fact, isn't it true that Mr. Falcone was making preparations to move permanently to Vermont, if you know?

A. That, I don't know. When I was up there, I was getting

the plant already for U.S.D.A. inspection.

Q Tell the jury who U.S.D.A. is.

A. Yes, it is a branch of your Government. They will come into your plant and explain to you what you need to do to qualify for--in other words, to use their stamp of approval. So the plant has to be in A Number 1 shape that will qualify for Pure Food & Drug, and if you pass the U.S.D.A. inspection, you don't have to worry about Pure Food & Drug. They know your product is pure.

Q That is a terrific advantage?

A. Yes, it is.

Q Would it be fair to say they had been expending a fair amount of money remodeling the place?

A. Spent quite a bit of money, yes, sir.

MR. ANOLIK. No further questions.

MR. O'NEILL. Nothing further of this witness, your Honor.

THE COURT. That is all, Mr. Laramee, thank you. You may step down.

MR. LARAMEE. Thank you, your Honor.

(Mr. Laramee left the courtroom and a new witness entered.)

WARREN LARAMEE, Sworn

DIRECT EXAMINATION

Q (By Mr. O'Neill) Can we have your name, sir?

A. Warren Laramee.

Q Where are you employed, at this time?

A. At Forestville, Wisconsin; Badger State Cheese Company.

Q What kind of work do you do out there?

A. I am a cheese maker.

Q How long have you been in the cheese making business?

A. Well, since late 1958.

Q Where did you first get into the cheese making business?

A. In Hinesburg, Vermont.

Q Where was this, at the Economou plant?

A. Yes.

Q Who were you working with there?

A. Well, with my father; making cheese with my father.

Q Where did you learn how to make cheese?

A. It was there.

Q Since that time, how much of the time since 1958 have you spent in the cheese business?

A. Ever since.

Q How much of that time have you worked with your father?

A. Just about all of that time.

Q Now did there come a point in time when you went to work for Alburg Creamery or at the Alburg facility?

A. Yes.

Q When was that, approximately?

A. May of 1966 at Alburg.

Q What was your position up there?

A. Cheese maker.

Q Was your father there when you got there?

A. Yes, he was.

Q What was his position?

A. Manager.

Q What type of things did you do compared to the type of things your father did up there?

A. Well, I made all the cheese and supervised the help.

Q What was your father doing in relation to that type of thing?

A. Managing the place.

Q Did you ever do any of the managing aspects yourself?

A. Well, not really; more-or-less supervisory over the help.

Q Yours is basically on the cheese end?

A. Right.

Q Were you there when Alburg changed its name, when a new operation came into effect?

A. When it became Alburg Creamery, yes, I was.

Q When, approximately, was that?

A. I am not too good at dates. 1970.

Q What type of cheese was Alburg manufacturing when you first started with them in 1966?

A. Mozzarella cheese and some Ricotta.

Q How about in 1970, what types of cheese?

A. Mozzarella, some Ricotta, and a small amount of feta cheese.

Q What about through 1973?

A. Mostly mozzarella cheese.

Q What percentage of mozzarella cheese was being made at the plant?

A. Over-all, you mean?

Q Yes.

A. Oh, maybe, ninety-five.

Q Was it, basically, the same percentage all the time give or take a little?

A. I would say so.

Q Now if your father wasn't there, did you ever have occasion to receive any instructions as to how the plant was to be run, if your father was gone for some reason?

A. Well, I would take like orders for what amount of cheese to make for customers or things of that nature.

Q Who did you get those orders from?

A. Well, if my father was going to leave, he would pass some of them on to me, or if the orders came from the bosses in New York over the phone, or whatever, well, I would take them from them.

Q What rule, if any, did you have in loading cheese on to trucks?

A. I used to load the cheese on the truck; not all of it, but depending on who was there and who wasn't.

Q How was the cheese shipped?

A. By trailer. It was palletized.

Q What trucking company, or companies, were used?

A. Rossetti. Well, I think Rossetti most, or on occasion St. Johnsbury.

Q Did you have anything to do with the maintenance of the production records of cheese?

A. How do you mean?

Q Who maintained the records of how much cheese was produced?

A. Oh, okay. We had a man that would weigh the cheese in the box, and he would fill out a sheet with each individual box weight and turn it into the office there to the bookkeeper.

Q From the time that Alburg became Alburg Creamery, roughly in 1970, where were they getting their milk during this period of time?

A. Mostly, Milton Coop.

Q Now did there come a point in time when your father left up there at Alburg?

A. Yes.

Q When, roughly, was that?

A. June; the middle of June, I would say.

Q What role--did anything change in terms of what you did

after that?

A. I continued to make the cheese.

Q Who managed the operation from then on?

A. I more-or-less assumed responsibility. I don't know.

Q After your father left, did you receive any payment for cheese from any one?

A. No.

Q Did the operation stop or continue shipping cheese? How would you describe that?

A. We continued producing cheese and we continued shipping cheese.

Q Where did you get your orders from to do that?

A. From New York.

Q Were you having any problems with the cheese at that time?

A. No.

Q Now, were you around when the fire burned the place down? Were you working there at that time?

A. Yes.

Q Did you make a search through the rubble afterwards to see if you could find any remnants of records, or anything like that?

A. I went into where the office area was and tried salvaging records, but as I picked them up, they would just go all completely to pieces. They were mostly charred anyway.

Q Would it be accurate to describe whatever you could find

in the office was so charred it wasn't any good?

A. You couldn't pick it up, really.

Q At the risk of asking somewhat a silly question, could you continue to make cheese after the fire?

A. No.

Q What was left there after the fire?

A. A lot of destruction.

Q Were there any warehouses or anything like that?

A. Part of the cooler was still standing.

Q But your main cheese making facilities were gone?

A. Right.

Q Now, did you have occasion to speak with Mr. Joseph Falcone from time-to-time?

A. Yes.

Q Did you ever talk with him about your cheese, whether the cheese was good, bad, or indifferent, or anything?

A. Well, on occasions he would say, "Try to ripen the cheese up a little," or "make it a little less ripe," depending on, I suppose, how fast it was moving in the New York area.

Q Did he ever compliment you on the cheese?

A. On occasions.

Q What would he say when he would compliment you on it?

A. Well, he told us he wished we could make more; everybody is crying for Alburg cheese. It is good cheese.

Q Now prior to the time that the well was drilled, were you having some problems with the cheese?

A. Yes, we were.

Q What was the nature of those problems?

A. Well, we were finding seaweed in the morning, when we would start work, on top of the cheese. I don't know if you call them tadpoles, minnows, or whatever, but some little fish, and, subsequently, I guess, a fishy taste. After awhile the cheese would develop a fishy taste to it.

Q Did there come a point in time when the well was drilled up there?

A. Yes.

Q Where did you get the water to make the cheese, after that?

A. From that well.

Q Did you have this type of problem, after that?

A. It seemed to go away.

Q Now directing your attention to the year 1971, would you describe for us what problems, if any, you had with the cheese process? Did you have any major problems, or minor problems? How would you describe the situation?

A. I would say it was a normal operation; no more problems than usual.

Q Did you have any major problems with the cheese?

A. Not that I recall.

Q Can you give us any kind of percentage of cheese that you

did have problems with, at most?

A. Well, I would say maybe one per cent.

Q Were you ever told by New York they had ever gotten a whole batch of rotten cheese, or anything of that sort?

A. No.

Q Mr. Laramee, what year was that well drilled, do you know?

A. Gosh, offhand I can't say; maybe 1969.

Q Would it be safe to say when that well was drilled, you ceased to have a lot of the problems you had before?

A. Well, it eliminated that fish problem that we had.

MR. O'NEILL. That is all we have of this witness, your Honor.

THE COURT. Any questions, Mr. Anolik?

CROSS EXAMINATION

Q (By Mr. Anolik) Mr. Laramee, there were, from time-to-time, little problems that arose with the cheese, isn't that true?

A. Yes.

Q At the best run cheese operation, you will get some problems, won't you?

A. Definitely.

Q Now, as a matter of fact, when the cheese left your plant--if you call it a plant, factory, or whatever it is--to the best of your knowledge it was in good shape, is that right?

A. To the best of my knowledge.

Q Did that cheese, however, have to hang around, or lay around, in someone's warehouse for awhile because of market conditions, or otherwise, and perhaps there was some penicillin in it, or a bit too acidas, it might develop some problems there, isn't that true?

A. If the cheese left Alburg in good shape, considering all things, if the cheese was presentable at the time it left, there is no reason for it to spoil unless not adequately taken care of.

Q But you will agree through that, for example, if there is a little bit too much acid in the cheese, or some penicillin in the cheese, you don't know about, problems will develop?

A. If the penicillin is in the cheese, the cheese wouldn't work properly in the first place.

Q You wouldn't know that?

A. I would know that while trying to make it. If there was penicillin in the milk, if there was high acidity in the milk, subsequently, the cheese would tend to be over-ripe.

Q You tried to control that to the best of your ability, isn't that true?

A. Certainly.

Q You received a rather large shipment of about five hundred cases back in 1973, didn't you?

A. I recall, yes.

Q Something was wrong, isn't that true?

A. Yes, but in all the years of the operation, that was the only return we had.

Q The only return you know about?

A. Well, it was the only return that came in.

Q You don't know about everything that came back. You were out some times, weren't you?

A. I was there the greater percentage of the time.

Q All right. Would you say that when you made cheese, for example, did you ever have any occasion to determine whether or not there was a fishy smell, or not? Do you remember when you talked about the fishy smell as it apparently developed at one period of time?

A. We weren't able to determine that at the plant. That was a flavor or smell it developed.

Q That was something you didn't know about until someone told you about it, isn't that true?

A. Correct.

Q That is what I was trying to get at, at the beginning, where something like that developed, youwill not know about that until you are informed about it?

A. I think you asked me about penicillin, too.

Q But with respect to flavor or something of that sort, you might get a complaint later on, isn't that true?

A. Sure, that is possible.

MR. ANOLIK. No further questions.

REDIRECT EXAMINATION

Q (By Mr. O'Neill) After the well was built, did you get problems with fishy cheese? Did you have any complaints back about it?

A. No. After we started using that water, things got better.

Q Other than what you said about the cheese on occasion, ripe or a little green, did you get any complaints about the quality of the cheese?

A. Not major complaints, no.

Q From the time that the new well was drilled, let's say, starting in 1971, 1972, 1973, did you receive more complaints at any one time, or less complaints, or was it, basically, the same throughout? How would you describe the situation in that respect?

A. I would say the compliments of the quality of the cheese outweighed the complaints. As to what percentage, I really couldn't say.

Q But were the compliments and the complaints, or the statement about the minor problems, was it uniform, generally, or any one year particularly bad? How would you describe that situation?

A. I think the complaints went mainly with the season.

In certain parts of the year, possibly more complaints than others.

Q But there was no particular time when you had an awful lot of complaints at one time, I take it?

A. No.

MR. O'NEILL. Nothing further, your Honor.

MR. ANOLIK. Nothing further, your Honor.

THE COURT. All right, Mr. Laramee, you may step down.

(Mr. Laramee left the courtroom.)

MR. O'NEILL. Could we approach the bench a moment?

THE COURT. You may.

(At the bench.)

MR. O'NEILL. Your Honor, despite our best efforts, that was, frankly, our last witness today. We have some work to do on potential witnesses for tomorrow, but that is our last witness for today. Mr. Warren Laramee was embarrassed because I got him into court without his suit. I told him I wouldn't get him in until tomorrow.

THE COURT. If that is the case, we'll excuse the jury for the evening and discuss scheduling and progress after the jury is gone.

MR. O'NEILL. Very well, your Honor.

(End of bench discussion.)

THE COURT. Ladies and gentlemen. The Government has advised me that the case moved more expeditiously than they anticipated, which means they do not have any additional witnesses to put on to night. So we will excuse you about thirty-five minutes early, and I will ask you not to discuss the case with anybody over the evening, or read anything about it, or listen to anything about it, and ask you to return at 9:30 tomorrow morning, and I will stay on the bench, so you can just file out, and we'll see you in the morning at 9:30.

(The jury left the courtroom at 3:55 p.m.)

THE COURT. All right, Mr. O'Neill, what can you advise the Court with reference to future scheduling in this matter?

MR. O'NEILL. Your Honor, in planning for this case, we made a number of assumptions which proved to be invalid; one, Mr. Bushey. I won't bother the Court with those. We had planned on a number of people coming from New York, but specifically, on Monday, and wouldn't need them over the weekend. We have scheduled people for next week, but we can go on tomorrow morning. We have a witness coming from New York, and we have a number of people coming in. I can't honestly say, your Honor, how long we'll go tomorrow. We feel we have got everybody in we need for tomorrow. We feel confident after the morning recess, we might go into the decent

part of the afternoon, but we really can't be sure. We have shifted around and made a number of phone calls. One witness, not under subpoena, a long distance hauler trucker, we can't tell when he will be here, but we think we will have a fair amount for the Court romorrow, but can't lead the Court to believe we'll have a full day's activity either.

THE COURT. When do you expect you will complete your case, based on the stipulated evidence and speed with which you are moving at the present time?

MR. O'NEILL. May I consult with Mr. Cook, your Honor?

THE COURT. Yes.

(Mr. O'Neill consulted with Mr. Cook.)

MR. O'NEILL. Your Honor, our best estimate is probably some time Tuesday. We can't conceive it will be morenthan that. We feel it might well be some point in time during the day on Tuesday. At the latest, we would say Wednesday morning, as we presently see things. There are some variables in here we are trying to work out something perhaps on a stipulation as to the grand jury testimony, which may or may not be workable, and also trying to work out something with respect to Mr. Bushey's testimony, which may or may not be workable.

THE COURT. I suppose, Mr. Anolik, after you hear the Government's complete case, you will have some

difficulty advising me how long you think your case will be. Do you have any outside figure, at the present time?

MR. ANOLIK. Your Honor, offhand, I would estimate about two days at the most. That is my offhand estimate, your Honor. Of course, as your Honor correctly pointed out, if something comes up that surprises me, I might have to revise that, but I would say two days at the most; perhaps, less.

THE COURT. Well, we haven't discussed this, Mr. Anolik, but I suppose you are aware that I had a discussion with a judge in Bronx County who is very anxious to see you on the 17th of February, and I assured him I would do everything within my power to see this matter is concluded by the 17th, and even to the extent that I advised him I would not be adverse to working on Saturday, the 14th, or on Monday, the 16th, which is a federal holiday. The way it is going, hopefully, we won't have to work on either day.

MR. ANOLIK. I don't think we will. I might say in fairness to your Honor, as perhaps you know from my exchange of letters, had that case in the Bronx started when it was supposed to start, it would have been finished, and your Honor would not have had this problem.

THE COURT. I appreciate that and can understand why the judge hoped to get you on, but in the last analysis, Vermont prevailed over New York.

MR. ANOLIK. I felt it should prevail, your Honor.

THE COURT. You have this other problem; that is, the motion to take the deposition of Mr. Bushey, and that was the subject, as I recall, the possibility was raised in the letter, was it not?

MR. O'NEILL. It was, your Honor. It was raised in the letter, and I think Mr. Murdoch and I discussed the possibility, briefly. We are not seeking to have the motion heard specifically now. We wish to get the motion before the Court.

THE COURT. I am not particularly anxious to suspend good courtroom time to take the deposition. That is something that can be taken in off hours, so to speak, such as in the evening, or on a Saturday, or Sunday, or even tomorrow afternoon, if you are able to do so. I don't want to use courtroom time to take Mr. Bushey's deposition. I want to make sure it is transcribed and don't have to wait for the transcription. I want to make sure it is transcribed and can be read into evidence inlogical sequence. I don't want to wait for that. So, do you have thoughts in that regard? Maybe I should leave that up to counsel.

MR. ANOLIK. Your Honor, before we finally decide on the stipulation, we are wondering whether or not we can see the thirty-five hundred material would have had on

this witness to see if the stipulation is consistent with the thirty-five hundred material.

THE COURT. You mean, the motion?

MR. ANOLIK. No. We have, in addition to the motion, a proposed stipulation which your Honor perhaps has not seen.

THE COURT. Where you would work this out as to Mr. Bushey's testimony?

MR. ANOLIK. Right. We are trying to work it out by stipulation.

THE COURT. That seems a reasonable request, Mr. O'Neill.

MR. O'NEILL. There is no grand jury testimony. That testimony is taken verbatim from the F.B.I. reports. We can iron it out this afternoon.

THE COURT. When you are talking about a stipulation, this does away with the necessity of the deposition?

MR. O'NEILL. That is right.

THE COURT. That is an entirely reasonable request, and I suggest that counsel go over the thirty-five hundred material and then advise me in the morning as to whether or not you need a deposition, just keeping in mind what I am advising that that should be taken, namely, not on courtroom time.

MR. O'NEILL. Very well, your Honor.

THE COURT. Anything further, gentlemen?

MR. ANOLIK. No, your Honor.

THE COURT. We'll stand in recess until tomorrow morning.

(Court recessed at 4:00 p.m.)

(February 6, 1976; 9:35 a.m.)

THE COURT. Good morning, ladies and gentlemen.

JURY. Good morning.

THE COURT. Mr. Cook, are you ready to proceed?

MR. COOK. Yes.

(The witness entered the courtroom.)

PERCY SHELTRA, Sworn

DIRECT EXAMINATION

Q (By Mr. Cook) Do you want to state your full name, once again, Mr. Sheltra?

A. Percy Sheltra.

Q Where do you live, sir?

A. Milton, Vermont.

Q What is your occupation, now?

A. Partially retired now.

Q Was there a period of time when you were associated with a corporation known as the Milton Cooperative?

A. Yes, there was.

Q What years were you associated with Milton Cooperative?

A. 1946 through 1955; then I left and went back in 1961 through to April 1, 1974 on a full time basis.

Q Have you been in the milk business most of your life?

A. Yes.

Q Were you a federal employee once?

A. I was with the Federal Milk Market Administration back in the early Forties.

Q Now, what was your position with Milton Cooperative?

A. General Manager.

Q I don't know if I asked you, but where is Milton Cooperative located?

A. Headquarters in Milton, Vermont.

Q I think most of us know where that is, but for the record, from Burlington, where is that located?

A. Fifteen miles north on U.S. 7.

Q Now again, what were your position and duties, just from maybe covering the period of time you were at Milton Cooperative?

A. Well, I was hired by the Board of Directors to carry on the daily operations of the milk plant operation.

Q And, you say you were the manager?

A. General Manager, yes.

Q And, did there come a time when--I will strike that. What

is the Milton Cooperative? What is its business?

A. It was organized by a group of farmers way back in 1919 to serve the farmers within the area in marketing of dairy products; namely, milk.

Q Getting into the Ninteen Sixties, say, approximately how many farmers shipped milk?

A. Early Sixties?

Q No, I will say the middle Sixties?

A. Four hundred.

Q Say, 1970?

A. Well, half of that, two hundred in the early Seventies.

Q And, 1973?

A. Forty-five.

Q Now did there come a time when Milton Cooperative had something to do with the establishment of Alburg Creamery?

A. Yes, they did.

Q What year was that?

A. Alburg Creamery, as such, I believe 1969.

Q Well, talking about the building.

A. That happened earlier than that. I would say, 1965.

Q Was the Milton Cooperative in some way involved in Alburg, what later became known as the Alburg Creamery building being established?

A. Well, the Milton Coop. had the supply of milk in Alburg, and we had marketed it in various ways over a per-

iod of years.

Q You are talking about the Town of Alburg?

A. I am talking about the Milton plant in Alburg.

Q Tell us that background.

A. We had a building known as an ice house located twenty or thirty feet from in back of the Milton Creamery--in back of the plant--and at that point these people wanted to establish a cheese business.

Q Who are "these people"?

A. These people were the Falcones; Falcone Dairy Products, Inc. So they renovated it at their own expense--the old ice house--and started making cheese on a small scale in that building back, I think, in 1965.

Q You say Milton Coop. had owned this building?

A. Yes.

Q And, as a result of some arrangement that you had with the Falcone brothers, did you transfer that to the Falcones?

A. Yes, we did.

Q And you say the building was renovated for a cheese plant to be operated by the Falcone interest?

A. Yes.

Q Now just so the jury has the picture clear, Milton does have a cheese plant somewhere too, do they not?

A. In Milton, yes.

Q In other words, the cheese plant is in Milton, and your

milk plant, so to speak, is in Alburg?

A. Right.

Q Now following, did there come a time when this renovated ice house, which became a cheese plant operated by the Falcone interest, did there come a time when it became known as the Alburg Creamery?

A. Yes.

Q And, do you know who operated that, who controlled that business there?

A. Falcone Brothers.

Q When I say "there," I am talking about Alburg Creamery, Inc.

A. Yes.

Q And, that was a cheese producing plant?

A. Yes.

Q Now you mentioned that Milton Coop. from its Alburg receiving milk station, sold milk to Milton Coop.--sold milk to Alburg Creamery, Inc.

A. Yes.

Q When did Milton Coop. start selling to Alburg Creamery, Inc.?

A. To Alburg Creamery, in 1969.

Q And you said that the Alburg Creamery plant and the Milton Coop. milk plant were only a few feet apart?

A. Twenty or thirty feet, yes, sir.

Q How did you get the milk from the Milton Coop. plant to

the Alburg Creamery building?

A. Just piped over; pumped.

Q Did Milton Coop. have other outlets for the milk that they got from farmers in that area, in addition to Alburg Creamery?

A. Well, our agreement with them, as I recall, read for the full supply except as the Federal Milk Market Administration demanded first class 1 milk be sent to the market; that is, first priority.

Q What is your recollection that you first started in piping milk over from Milton Coop. to Alburg Creamery? What year?

A. 1965. Not to Alburg Creamery, to Falcone in 1965.

Q Then in 1969 the building became known as Alburg Creamery, Inc.?

A. Right.

Q Now starting in 1969 when the building up there, the cheese factory, became known as Alburg Creamery, Inc., how much of Milton's milk was being piped over there, just on an average?

A. Well, this would vary seasonally, of course, but I would think from a low point of 40,000 pounds a day to a high point of 60,000.

Q Just as an average percentage of all your milk, what percentage would that be, approximation?

A. Roughly, twenty per cent.

Q Now, did Milton Coop. also make cheese?

A. In Milton, yes.

Q And, where did that cheese go to?

A. Falcone Dairy Products.

Q Where were they located?

A. Brooklyn.

Q I don't think there is any mistake in the jury's mind, but Milton Coop. shipped cheese from Milton and they piped milk from Alburg, insofar as Falcone and Alburg Creamery are concerned?

A. Right.

Q Now, was there some credit arrangement insofar as how you got paid for your sale of the farmers milk from Milton Coop. to Alburg Creamery? That is, with regard to time?

A. Thirty days.

Q And, let's go back to 1969-1970, you got your payment, I assume, from Alburg Creamery, Inc. during that period?

A. Yes.

Q We are talking about milk payments?

A. Yes.

Q Were they timely within the thirty-day period?

A. In 1969, I would say they were.

Q And, 1970?

A. I would think they were.

Q In 1971?

A. Yes.

Q 1972?

A. As I recall, late 1972 I began having problems.

Q And, we have been talking about problems getting money for the milk that you delivered to Alburg?

A. Right.

Q Did there come a time when you would say the problem got serious?

A. Yes, it did.

Q What date did that get serious?

A. Well, I was concerned in late 1972, but I am sure early 1973 it was really a problem.

Q Now instead of getting payments, say, within thirty days, which was what your agreement was, as I understand, with Alburg Creamery, how did they--what was the time period, say, in early 1974?

A. Well, there was a time I might get partial payment. We billed them twice a month, and their check for the first period in any month of milk purchase from the Milton Coop. was suppoed to be in Milton, Vermont by the 10th of the following month, because that was the payday for my producers.

Q Producers are, of course, milk producers? Farmers?

A. Right.

Q Can you, either from records that you have--and I don't want to ask you exact figures--but can you give us an idea

as to how much that back log was in dollars and cents of money due you from Alburg that was in arrears at the beginning of 1974? Can you give us an idea, and going through July of 1974?

A. Their account was running about $100,000 a month.

Q I said "1974". I meant to say, 1973, talking about milk.

A. Yes, the account was running about one hundred thousand a month.

Q As you got into May and June and maybe July of 1973, did they increase the arrearage of milk payments?

A. Yes.

Q Can you give me your best estimate of what the figures might have been in May and June and July of 1973?

A. Well, it would be roughly one hundred thousand, plus perhaps other milk days, another seven days at 120,000 possibly.

Q Eventually, Milton Coop. ceased piping milk, so to speak, from there facility in the Town of Alburg to the Alburg Creamery, is that right? You stopped?

A. Yes, when the building burned.

Q What day did the building burn?

A. July 13, 1973.

Q Could you give us an approximate figure as to how much this arrearage was that Alburg Creamery, Inc. owed Milton Coop. for milk on that date?

A. Two hundred six thousand.

Q What was that?

A. Two hundred six thousand dollars.

Q Now during this period where you say they were in arrears--when I say "they,"--Alburg is in arrears on its agreement with regard to payments, had you made some effort to try to speed up those collections?

A. Yes, I had.

Q And, who did you get in touch with on that?

A. Well, I was continually in touch with Leo Laramee.

Q He was the plant manager of Alburg Creamery, Inc.?

A. He was the manager, as far as I know, in Vermont, yes.

Q What other people were you in touch with?

A. Joseph Falcone.

Q Anybody else, from time-to-time?

A. I might have talked with Joseph Curreri about that account, but I can't be sure.

Q By the way, you have mentioned the names of Joseph Falcone and Mr. Curreri. Are they in court today?

A. I can see Joseph Falcone. Joseph Curreri, I never saw but once, to my knowledge, in my life, but I think that is him sitting next to Mr. Falcone.

Q But, had you talked to Mr. Curreri on the phone a number of times?

A. Oh, yes.

Q And, give us an idea.

A. Some times, three or four times a day; always a minimum of three or four times a week.

Q How about Mr. Joseph Falcone, as to phone calls?

A. Oh, I was continually in touch with Joseph Falcone, too. Some times it might go a week or ten days, I didn't talk with him.

Q Now you say that you had tried to get payments of this back milk account due Milton from Alburg, for the period you mentioned in 1973?

A. Yes.

Q Do you remember, was there a time when you had been told a $58,000 check was on the way?

A. Yes, there was.

Q Can you remember the circumstances as to when that was, and who told you that?

A. That $58,000 was the bill on milk from May 16th, the last half of May, and that would have been due in Milton by the 25th of June. It had not come as of July 13th. I think Leo Laramee told me that was on the way; Joe Falcone might have, I am not sure.

Q Did you ever discuss that sum in Burlington with either Mr. Falcone or Mr. Curreri?

A. I think that being the oldest invoice in line for payment, I think that was discussed with Joseph Falcone on the

night of July 12th.

Q You say, the night of July 12th?

A. I believe it was.

Q This is for the amount of $58,000?

A. Yes.

Q How did you happen to discuss it with him then?

A. Douglas Webb, the President of the Coop. and myself had an appointment with Joseph Falcone down at Marble Island for dinner on the night of the 12th.

Q Where is Marble Island?

A. In Colchester, on the lake.

Q You say it is your best recollection this $58,900 check was discussed?

A. I think it was.

Q Were you told by anyone it was on its way?

A. I think Leo Laramee told me it was on its way. I don't think Joseph Falcone would be in a position to know at that point that it was on the way, but somebody must have told Leo Laramee, or he wouldn't have known.

MR. ANOLIK. Objection, your Honor.

THE COURT. Objection sustained. We'll strike that answer, ladies and gentlemen. Please disregard it.

Q (By Mr. Cook) Did you discuss finances with Mr. Joseph Falcone on July 12th when you met him?

A. Yes, I did.

Q Did you discuss about this delinquent milk account?

A. Yes, I did.

Q You did a cheese business with him, too?

A. Yes.

Q Was that account delinquent as well?

A. Yes, it was.

Q Did you discuss that with him?

A. Yes.

Q When I say "him," with Mr. Falcone?

A. Yes.

Q And, did he make you any promises with regard to that, at that time?

MR. ANOLIK. Your Honor, I object. I am asking the conversation be represented, rather than did he make a statement; make a comment.

THE COURT. It also has some relation to time, too, Mr. Cook.

MR. COOK. This is July 12th of 1973.

THE COURT. The same night?

MR. COOK. Yes, sir.

A. I can't recall he made any definite promises.

Q (By Mr. Cook) But, it was definitely talked about, as I understand it?

A. Yes.

Q And, your purpose was to get money, I take it?

A. Right.

Q Now you state Milton Coop. also sold cheese?

A. Yes.

Q Did they sell cheese to Mr. Falcone, or his corporation?

A. Yes.

Q Just tell us, if you can, just in summary, did you have some agreement with him to sell cheese; have some agreement with Falcone Dairy to sell cheese to them?

A. Yes.

Q What, generally, was the agreement?

A. The first agreement, I believe, was made in 1962, and it was updated four or five or six times, possibly, between then and the time we stopped doing business with them.

Q What did it call for?

A. To start with, it called for--we guaranteed to furnish them the cheese made from so many vats a day.

Q Again, you are talking about a cheese plant of Milton Coop. in Milton, Vermont?

A. Right.

Q As distinguished from their milk gathering facilities in Alburg, Vermont?

A. Yes.

Q Did that agreement that Falcone Dairy, Inc. had with you to take the Milton cheese continue for some period of time?

A. Yes, it did.

Q How long a period did it continue for?

A. Well, certainly into the spring of 1974.

Q And, it continued even beyond the fire that destroyed the Alburg Creamery in 1973?

A. Yes.

Q Did there come a time when you had difficulty collecting your payments for cheese from Falcone Dairy, Inc.?

A. Yes.

Q When did that problem first develop?

A. I believe in January of 1973.

Q And, can you just tell us where did you get your payments for cheese? You said you shipped it to Falcone Dairy?

A. Yes.

Q That is in Brooklyn?

A. Yes.

Q How much of the Milton cheese did Falcone take?

A. All of Milton's cheese. That was in the contract.

Q And, can you just give me an idea--you said starting in January of 1973--did their account, Falcone Dairy Inc. account, with you for payment of cheese get behind?

A. Yes, they did.

Q Eventually, did their open account get substantially behind?

A. Yes, it did.

Q Do you know the exact amount, or proximate amount?

A. As of today?

Q Yes.

A. Or when we stopped doing business with them?

Q Give it to me, July 13, 1973, approximately.

A. Three hundred seventy or eighty thousand dollars.

Q I don't know that I asked you--I think I did, but I have forgotten--what the milk account was behind on July 13, 1973, and I think you told me, but will you tell me again?

A. Two hundred six thousand dollars.

Q And so the cheese account which Milton had directly with Falcone Dairy, and the milk account which they had with Alburg Creamery, the total amount of the indebtedness to Milton Coop. of those two accounts, on July 13, 1973, was how much?

A. Well, the 206,000 plus three hundred seventy or eighty thousand, well over half a million dollars.

Q Now you said you had considerable difficulty getting your cheese payments as well as your milk payments in January of 1973?

A. Yes.

Q That is when it started, I think you said?

A. Yes, I did.

Q And, who did your checks come from for the cheese payments?

A. Falcone Dairy Products.

Q And, they were signed by whom?

A. Joseph Falcone.

Q And, can you tell me, did you ever get any bad checks during that period?

A. That 's when the problem started was January of 1973 with the $68,000 protest check.

Q Can you just tell me a little bit about that, if you will, please? What was that for and how it came about?

A. I don't recall the billing that it covered, but I have it in my schedule, but it was a check that wasn't covered--insufficient funds. This happened January of 1973. That check, I can't recall when it was made good. It was, eventually, made good.

Q Did there come a time when there was a check in the amount of $29,000?

A. Yes.

Q And, that figure means something to you?

A. Yes.

Q And, can you tell us about that check?

A. That is the $29,000 check that never was made good.

Q When was that issued?

A. January 16, 1974.

Q And, when did Milton Coop. cease business?

MR. ANOLIK. Is that 1973 or 1974?, the January check?

MR. SHELTRA. 1974, I believe. Can I refer

to my notes?

MR. COOK. Yes, refer to your notes.

MR. ANOLIK. He had been talking about 1973, your Honor.

THE COURT. He had been, up to this point.

MR. SHELTRA. $29,000 check, January 16, 1974.

Q (By Mr. Cook) You still continued to do business, cheese business, with Falcone Dairy after the fire discontinued your milk business, is that right?

A. Yes.

Q Can you tell me, after the fire, January 13, 1973--excuse me, July 13, 1973--was the milk account of some odd thousand dollars that you spoke about, which Alburg owed Milton, was that ever reduced?

A. The two hundred six thousand dollars?

Q Yes.

A. No.

Q There were never any more payments on that?

A. No.

Q How about your large figure for cheese which you said existed on July 13, 1973, was that, subsequently, reduced?

A. Wait a minute, maybe I mis-stated that. That $206,000 balance for milk from Alburg Creamery Company has been reduced today by a check received from the referee in

bankruptcy.

Q Tell me, how much did that reduce it?

A. Fifty-nine thousand something. $59,913.80.

Q So, can you tell me what was the balance now due today for, let me say, the balance unpaid on the milk account?

A. Well, the difference between the two.

Q Can you give it to me, roughly?

A. One hundred forty-seven thousand.

Q One hundred forty-seven thousand dollars remains unpaid to Milton Coop because of the milk account with Alburg?

A. Yes.

Q How about your cheese account?

A. Cheese account still stands at $356,000.

Q And, that is with Falcone Dairy Products?

A. Yes.

Q Were your checks always signed by Joseph Falcone?

A. From---

Q From Falcone Dairy?

A. I believe they were.

Q Was there any time in 1973, say from the period of January to July, along in there, when you received any checks directly from Falcone Dairy to Milton in payment of milk that you had sold to Alburg?

A. During what period?

Q In 1973?

A. Yes, I believe there was.

Q Do you remember the amount of that check?

A. I can't be sure about the time, but I remember a $35,000 check from Falcone to apply on the Alburg Creamery Company milk account.

Q Did that check give you that credit?

A. Beg pardon?

Q Was your milk bill reduced by that amount?

A. Certainly.

Q Now because of the arrearage which you had in both your cheese and milk accounts, did you ever get into the situation where you were required to get certified checks?

A. Yes, we did.

Q How did that happen? Can you tell us?

A. Well, it originated with the $68,000 check in January.

Q Of what year?

A. 1973, the first check that was returned. As I recall, it was the very first one that was ever returned for insufficient funds. At that point, the bank would not accept their checks for straight deposit any more. They would accept them on the condition they were collected. So my account would not get credit until such time as the bank informed me that check had cleared.

Q Now, can you give me an idea of the milk that Milton Coop. piped over to the Alburg Creamery which was made into

cheese at the Alburg Creamery? Do you know, approximately, how much of Alburg Creamery's milk supply was your milk?

A. I really would have no way of knowing.

Q Were you a substantial supplier?

A. I would have thought we were. I was always under the impression we were the principle supplier?

MR. ANOLIK. I object to what his impression was.

THE COURT. We'll sustain the objection.

Q (By Mr. Cook) Mr. Sheltra, in 1973, out of your Milton plant, approximately how much cheese were you shipping to the Falcone Dairy, Inc. a week, say, in the summer of '73?

A. I would say between fifty and sixty thousand dollars worth of cheese a week.

Q Going back to 1971, how would your shipments in 1971, per week, to Falcone Dairy, from Milton, compare with that figure?

A. Same time of year, it would be about the same.

Q And, what kind of cheese did you make at Milton?

A. Italian cheese.

Q Is that called mozzarella?

A. Yes, I would guess so. Apparently, there is a point in this Italian cheese operation where the low fat Italian cheese has one name, and the high fat has got another. Mozzarella is part of it.

Q Did you make both kinds of cheese?

A. Yes.

Q I guess, just one last question. When you said fifty to sixty thousand, is that pounds a week?

A. Dollars a week.

Q Dollars a week. How does that convert to pounds?

A. Well, you are talking about two different years. Of course, the price changes.

Q Approximately.

A. I guess in the period we are talking about in 1973, it seems to me the billing price was sixty, possibly two or three cents a pound. In 1971--you asked me about 1971--the price would have been probably in the forty cents, maybe fifty.

Q If I could do some arithmetic for you, and I will probably do it wrong, but the poundage would be up around 80,000 pounds a week, maybe? Somewhere in there, or under?

A. That would be high. That would be two full truck loads, and I think in 1973 we were making possibly a truck and a half, or maybe three trucks every two weeks.

Q That is good enough. How much is in a truck, for the record?

A. Roughly, 40,000 pounds.

Q Did you know Leo Laramee for some time?

A. Yes.

Q And, does he have a reputation of being a good cheese maker?

A. I would say, yes.

MR. COOK. I guess that is all.

MR. ANOLIK. May I proceed, your Honor?

THE COURT. Yes.

CROSS EXAMINATION

Q (By Mr. Anolik) Mr. Sheltra, do I understand that in about 1965, Milton had about 400 farmers and in about a seven or eight year period, they were down to 45 farmers?

A. One hundred forty-five.

Q I am sorry, I missed the one hundred. So they were down to 145?

A. Yes.

Q The price of your product, the cheese rose in about a five-year period from two or three cents a pound to forty cents a pound, is that what you said?

A. No.

Q What did you say? I thought I heard the figure two or three cents a pound and forty cents a pound.

A. I thought I said sixty-two or three cents a pound in 1973 to forty or forty-five cents a pound in 1971.

Q So there was about a one-third price markup, is that correct?

A. I wouldn't call it markup; an increase in the value of the cheese.

Q It was the same cheese though, wasn't it?

A. Right.

Q Except it cost more, isn't that true?

A. That is right.

Q Do you know whether or not there was any price freeze in effect between 1969 and 1973, if you remember?

A. I remember a period of price freeze, but I don't remember the dates.

Q What was the effect of the price freeze, do you know?

A. No, I don't.

Q Wasn't Falcone, for example, not getting to sell their cheese above a certain price?

A. I don't know.

Q Now you sold cheese to both Falcone and to Alburg Creamery, is that correct? I mean, cheese to Falcone and you sold milk to Alburg Creamery, right?

A. Right.

Q You never sold milk to Falcone, though?

A. Yes, I sold milk to Falcone.

Q Falcone Dairy?

A. Yes.

Q In what form was that milk?

A. When we were making cheese in Alburg as Falcone Dairy Products.

Q I see. You mean before Alburg was created?

A. Before they formed the Alburg corporation; the Vermont corporation. The Alburg Creamery Corporation.

Q Once Alburg Creamery was established, your business was with Alburg Creamery?

A. The milk business, yes.

Q But your cheese, would it be fair to say, you were really in competition with Alburg so far as cheese was concerned?

A. I don't know.

Q Well, you were both selling the same product, weren't you?

A. I am not sure about that.

Q Were you selling mozzarella cheese?

A. Yes.

Q Were you selling the same type of mozzarella that Alburg was selling?

A. I don't know.

Q I see. Now, you indicated that very substantial amounts of money--$206,000 and $350,000, or whatever it might be--were built up. Can you tell us how it was possible for such indebtedness to be created? Didn't there come a point when you would say, "Wait a minute, you owe us $20,000, $50,000. We won't extend any more credit"? Didn't that ever happen?

A. Yes.

Q You thought they were a pretty good credit risk, didn't you?

A. Yes, we did.

Q Because they had always been a reliable company, isn't that so?

A. That is right.

MR. ANOLIK. I have no further questions.

MR. COOK. I think that is all we have, your Honor.

THE COURT. Thank you, Mr. Sheltra.

(Mr. Sheltra left the courtroom and a new witness entered.)

JOHN W. SYMONDS, JR., Sworn

DIRECT EXAMINATION

Q (By Mr. O'Neill) May we have your name, sir?

A. John W. Symonds, Jr.

Q How are you employed, Mr. Symonds?

A. I work for St. Johnsbury Trucking Company, sir.

Q What is your position with them, at the present time?

A. I am Vice President of Administration.

Q How long have you been with St. Johnsbury Trucking Company?

A. Over twenty-two years.

Q How long have you been Vice President for Administration?

A. Approximately, two years.

Q Would you tell us what your duties are as Vice President of Administration?

A. Basically, sir, I am in charge of all the paper work in the offices of the company.

Q Where are you stationed, or where do you work?

A. In St. Johnsbury, Vermont.

Q Is the St. Johnsbury, Vermont office where the main office for this type of thing is?

A. Yes. This is the home accounting office of the company.

Q And, where do you have other offices of this nature? Do you have others besides that one there?

A. We have terminals in all of New England, New York State, New Jersey.

Q What type of records do you maintain there at St. Johnsbury in terms of the geographic area?

A. We maintain all of the accounting records of the company in St. Johnsbury.

Q How about bills of lading and things of that nature?

A. We maintain bills of lading and other receipts.

Q And, you cover the company's entire operation with the records there, or those records, depending on the geographic distribution?

A. No, sir, they are all contained in St. Johnsbury.

Q I show you what has been marked as Governments Exhibits for identification, "13," "14," "9," "10," "11," and "12," and ask you if you can identify those? (Handed to the witness.)

A. These, sir, are delivery receipts. They are all shipments out of Alburg Creamery going to various consignees.

Q There are, actually, two documents here?

A. Right. One is the bill of lading, the other is our

* * *

CROSS EXAMINATION

Q (By Mr. Anolik) Mr. Grady, you merely work as a trucker, is that correct?

A. Right.

Q You drove a truck, and who supplied you with the equipment that you drove?

A. Great Northern Leasing.

Q Whatever arrangements were made for that truck were not made through you, they were made through your boss, is that right?

A. Correct.

MR. ANOLIK. No further questions.

THE COURT. You may step down.

(Mr. Grady left the courtroom and a new witness entered.)

MARIO ACCARDI, Sworn

DIRECT EXAMINATION

Q (By Mr. Cook) Mr. Accardi, do you want to give us your full name, please?

A. Mario Accardi.

Q Where do you reside, sir?

A. 1819 24th Street in Brooklyn, New York.

Q What is your business?

A. I am a C.P.A.

Q That is, Certified Public Accountant?

A. That is correct, sir.

Q How long have you been a Certified Public Accountant?

A. Since 1942.

Q Where has your practice been?

A. Locally, in Brooklyn, Long Island, New York, Queens.

Q Did there come a time when you started doing your accounting work for Falcone Dairy Products?

A. Yes, sir.

Q And, specifically, did you do work for a corporation in which Joseph Falcone was a member?

A. Yes, sir.

Q And, Mr. Curreri was a business manager during the later years?

A. That is correct, sir.

Q Are they in the courtroom today?

A. Yes.

MR. ANOLIK. We concede their identity, your Honor.

THE COURT. Yes; okay.

Q (By Mr. Cook) I don't know that I asked you but when did you commence working for Falcone Dairy Products?

A. Over twenty years ago.

Q And, was that work continuous thereafter?

A. Yes, sir.

Q In other words, you started in about 1955 or 1954?

A. Thereabouts.

Q And, when did you last work for Falcone Dairy Products?

A. In May of 1974.

Q Now, could you give us an idea how often you would go to Falcone Dairy Products?

A. Generally, once a month.

Q Was there another business there in 1971, '72 and '73 at the same building?

A. Yes, there was Lido Cheese.

Q Any other businesses in the same building?

A. No, not active business.

Q And the officers in Falcone Dairy, were any of those in Lido Cheese as well?

A. No, they had different officers in Lido Cheese.

Q Do you remember Mr. Joseph Falcone being connected with Lido Cheese?

A. He was not an officer, but he was there operating Falcone Dairy Products.

Q Did he have relatives who are officers in Lido Cheese, to your knowledge?

A. That is correct.

Q Who were they?

A. His two sons.

Q I get the picture that the office for Falcone Dairy Products during 1972 and '73, was that also the office of Lido Cheese?

A. Yes. They may have had different offices but same locality.

Q When you say "same locality," same building?

A. Yes.

Q You went there once a month for Falcone Dairy Products?

A. That is right, sir.

Q And, other times you went maybe more often?

A. Yes, normally due some times for taxes.

Q Now, you terminated your work with Falcone Dairy Products in May, I think you said, or June of 1973?

A. 1974.

Q For the last four years, or five years, say from 1969 through 1974, who was the manager of Falcone Dairy Products while you were there?

A. Primarily, Joseph Falcone as Production Manager and for several years Mr. Joseph Curreri was Office Manager.

Q Was he the Office Manager during those periods I have spoken about from 1969 through 1974?

A. Exactly, I don't know, but I may say 1971, '72, but not in the early years.

Q Well, you would be safe in saying, at least, in 1971 and 1972 Mr. Curreri was the Office Manager?

A. I think so.

Q And, up through 1973 as well?

A. That is correct, sir, but I have to say Mr. Curreri also

had a dual job. He was also a part time commission salesman.

Q Now, in conjunction with your work, what did you do with the books of Falcone Dairy when you went there once a month, or more often?

A. When the books were completed by various clerks and bookkeepers, and all entries made by them, I would summarize the books and post them monthly.

Q Prepare tax returns, based thereon?

A. Pay payroll taxes and tax returns, yes.

Q Would it be fair to say you provided the paper work necessary to show the balance sheet or the financial outlook of the corporation?

A. That is correct, sir.

Q Now, if you had questions with regard to policy, or what you were to do with regard to questions, or about certain entries--say, the important entries--who did you check with?

A. I would check with the production manager and office manager.

Q Who is the production manager?

A. Mr. Joseph Falcone.

Q And, the office manager?

A. Mr. Joseph Curreri.

Q Now I want to show you Government's Exhibit "43". Will you thumb through that and tell me what it is? (Handed to the

witness)

A. This is a combination general ledger which summarizes the monthly entries, and also a general journal which represents any adjustments pertaining to a particular period in question.

Q Now, are all the entries in Government's "43" made by you, s can you tell me?

A. Yes, these entries are made by me based on whatever took place during the month; adjustments that management had to make, bookkeepers had to make, and I reflected it in this particular book.

Q In other words, the handwriting is yours?

A. Yes, sir.

Q And, we have been referring to, I believe, Government's "43"?

A. That is right, sir.

Q I now show you an Exhibit marked Government's "44". Can you tell me what that is? (Handed to the witness)

A. This is a sales book representing invoices charged, and some times credits and returns. It is a combination of both, referring to sales.

Q Would you call this the daily sales book?

A. That is correct, sir.

Q Of Falcone Dairy Products, Inc.?

A. That is correct, sir.

Q Again, that is Government's "44"?

A. That is right.

Q And, the entries in th. book were made by who?

A. Various bookkeepers; no one in particular. They had various changes--three or four, at times.

Q I think a woman testified here by the name of Mrs. Lustig. Was she a bookkeeper there at that time?

A. She was one of the bookkeepers.

Q She would have been one of the persons to make entries in Government's "44" on a daily basis?

A. That is correct, sir.

Q Can you tell me what Government's Exhibit "45" is? (Handed to the witness)

A. This is a book containing all the creditors, known as the Accounts Payable Ledger of all creditors; a sheet for each creditor showing their purchases and payments against the journal.

Q Would you call that a journal of accounts payable?

A. A subsidiary, to be exact, of Accounts Payable.

Q And, all three of these books, Government's "43," "44," and "45" are kept in the ordinary course of business?

A. That is right, sir.

Q Now, refer, if you will, to Government's "43" which you said was the General Journal, and, I believe, a summary?

A. General Ledger summary and the General Journal; it would be entries which are not reflected in any of the

other books.

Q Would you look at Page J-12 of Government's "43"?

A. I have it.

Q You have it?

A. Right.

Q Now, again, what particular part of Government's "43" is that? Is that in a ledger or journal?

A. This is a journal.

Q Is it in the General Journal?

A. Right.

Q Now, I want you to compare that, if you will, and I think you have already seen Government's "72" for identification, and have you---

MR. ANOLIK. May I move over, your Honor?

THE COURT. Surely.

Q (By Mr. Cook) You have looked at Government's "72" for identification earlier this morning, haven't you?

A. Right.

Q And, that does compare with Page J-12 in the General Journal, does it not?

A. Yes.

Q That is a blow-up of it?

A. Right.

Q Is that correct?

A. That is correct.

MR. COOK. We would like to offer it at this time.

MR. ANOLIK. Your Honor, we have no objection.

THE COURT. All right, "72" is admitted.

(Government's Exhibit "72" was received in evidence.)

MR. ACCARDI. Seventy-two? I see Number "12" here, sir. Did you say, "72"?

MR. COOK. This is "72" here. (indicating)

THE COURT. That is the exhibit number.

MR. ACCARDI. Oh. Right.

MR. COOK. Would you come down here, please, Mr. Accardi. (The witness left the stand and went to the board on which Government's Exhibit "72" was displayed.)

Q (By Mr. Cook) Now, once again, this is a page out of the General Journal?

A. Right.

Q And, tell me what the General Journal does, once again.

A. It makes entries which are not reflected in any of the other journals.

Q And, this is a certain page from the General Journal, isn't it? "Government's "72" is a blow-up of a certain page?

A. Right.

Q Would you agree it is Page J-12?

A. That is right.

Q Now, this blow-up, Government's "72," refers to a certain period of time, does it not?

A. Right, sir.

Q And, what period of time does Government's "72", Page J-12, cover?

A. It covers the fiscal year June, 1973 to May 31st of 1974, and in this particular area, it is January and February of 1974.

Q Up at the top, sir, there is an entry December 1, 1973?

A. 1973.

Q Yes, 1973. So would it be your testimony that the entries on Page J-12 commence approximately December 1, 1973?

A. On that page, yes.

Q And, then they conclude on Government's "72" with a February 28th entry, and would that be February 28, 1974?

A. That is right, sir.

Q In short, the entries that are made on this particular page, Government's "72," are from the period December 1, 1973 through February of 1974, is that correct?

A. That is correct.

Q Now, I want you to notice, specifically, an entry made January 31, 1974. Can you see that on Government's "72"?

A. Yes, sir.

Q It is a blow-up, but is that in your handwriting?

A. Yes, sir.

Q And, is everyth. , on Government's "72" in your handwriting?

A. Yes, sir.

Q Will you just read out loud what the entry is for January 31, 1974?

A. The entry pertains to an adjustment of accounts payable.

Q Read it, first of all.

A. Account bearing "Alburg, 210,000," and "purchases, accounts payable adjustment" for the same amount, and it reads, "To adjust credits to customers due to defective cheese from July, 1971 through December, 1971 as per list retained by management".

Q And, once again, that is carried out as a credit to Alburg in the amount of--credit to Falcone Dairy in the amount of $210,000--$210,711.05, is that correct?

A. That is correct.

Q Now, do you recall, personally, making that entry today?

A. Yes, I made that entry.

Q And, you can recall that entry, making it, can you not?

A. Yes.

Q Can you tell me if you had a conversation with Mr. Joseph Falcone and Mr. Curreri prior to making that entry?

A. Yes. I asked them what the credit was and for what period.

Q Why did you happen to ask them what that credit was for?

MR. ANOLIK. Objection as to "why," your Honor.

MR. COOK. It is perfectly proper.

THE COURT. We'll let him answer it.

A. It pertained to an old period.

Q (By Mr. Cook) What old period?

A. A credit pertaining to July through December, 1971.

Q In other words, two years before?

A. Two years before, and I questioned it since usually you try to reflect the entries, or the transactions, as they appear in a particular year.

Q You don't usually take a credit two years after a transaction?

A. Generally speaking.

MR. ANOLIK. Objection, your Honor.

THE COURT. I will sustain that objection.

Q (By Mr. Cook) Do you usually do that, take a credit two years after?

A. I could take it if it was omitted in any way, and it shows up two years later for any reason. It would be normal to make an entry, and if the amount is small, that is one thing; if it is a major item, it might necessitate a filing of amended returns.

Q Would you say it was unusual?

A. It was. Even though $210,000 represents only about 5 per cent of their sales in that period; not this particular period. This particular period represented about 5 per cent

of the sales and whether it is unusual, or usual, is a question.

Q May I ask you, do you ever recall on all the work that you did on the Falcone books--we'll say, from the period 1969 to 1973--of ever making another entry of a substantial amount which was two years or more after the event?

A. No, I don't remember of any.

Q So, you questioned it, you said?

A. Right.

Q And, you said you talked to both Mr. Curreri and Mr. Falcone?

A. Yes, sir.

Q Did you have a substantial conversation with them?

A. Yes. I asked why the credit was taken now for something that pertained to almost two years prior.

Q Now, could I ask you before you tell me about the conversation, at that time did you know whether or not as to Alburg Creamery there was an involuntary bankruptcy petition existing?

A. Oh, yes, sir, certainly.

Q You were aware of that?

A. Yes, yes.

Q I assume you were aware of it shortly after it was filed?

A. Yes, I was aware they had bankruptcy proceedings.

Q I think it has appeared here in evidence that that petition for involuntary bankruptcy for Alburg Creamery, I believe,

was filed around December 12, 1973. Does that jive about right, with you?

A. I don't know when it really started.

MR. ANOLIK. We'll accept that date. If that is the date it was, we have no objection to stipulating. Whatever date, we'll stipulate that was the day.

THE COURT. Stipulation noted.

Q (By Mr. Cook) Would it be fair to say this entry being made on January 31, 1974, you knew that that entry was made some time after this involuntary petition had been filed?

A. It appears to be so.

MR. ANOLIK. Did you say by Falcone or Alburg?

MR. COOK. I should have said, Alburg.

Q (By Mr. Cook) I want to get it right. You said you were aware that--correct me if I am wrong--you were aware that Alburg Creamery had been placed in bankruptcy shortly after the event happened?

A. To answer it properly, it has been quite some time that they have been through bankruptcy proceedings. As far as the exact date of the involuntary procedure, I do not know.

Q I am not asking you for the exact date, but it has appeared here in evidence it was either December 12th or December 13th when Alburg was placed in bankruptcy, or, at least, an involuntary petition was filed against them. Now, I am asking you, that is some six weeks prior to January 31, 1974?

A. Yes, sir.

Q My question is, on January 31, 1974 you would have been aware that Alburg Creamery had been placed in bankruptcy?

A. Yes, they had bankruptcy proceedings. What time it was in, I don't know, but I know they had bankruptcy proceedings.

Q Now, you say you did question the entry and you talked to Mr. Joseph Falcone and Mr. Joseph Curreri?

A. Right.

Q What is the explanation that they gave you?

A. They said that they had defective cheese in July, probably manufactured April or May, which came back; credits came back in July through December of 1971. They had to give credit to their customers because the cheese was defective in the sense it was made from polluted waters, and they had to give customers credit for that.

Q Did they also have in their possession some list that they claimed totaled these credits?

A. They had some sort of adding machine tape to equal the $210,000.

Q Did they have a list of customers in addition to the adding machine tape?

A. I didn't see it, but they said they had a list of $210,000. I didn't see the actual names, but there was a tape for $210,000 reflecting all the customers they gave

credit to.

Q Now you made that entry based on the representation of Mr. Curreri and Mr. Falcone, is that right?

A. Yes. Also, I want to add that it was taken up with their counsel in bankruptcy, and that it was a legitimate credit, and that it should be taken.

Q That is something they told you?

A. Yes, sir.

Q When I say "they," I mean Mr. Falcone and Mr. Curreri.

A. That is right.

Q You didn't get in touch with their attorney directly?

A. No, sir.

Q So your entire basis for making this entry was solely on the instructions which Mr. Falcone and Mr. Curreri gave you, is that right?

A. That is right. A further question was asked as to why the credit wasn't taken two years ago. They claimed that since it was the same company in the sense that Falcone Dairy owned 100 per cent of Alburg, they didn't feel it was necessary because it would be in the same pocket, more-or-less.

Q Can you tell me, these credits related to two to 2-1/2 years prior to the date that you recorded them, right?

A. Right.

Q During this entire period, did Mr. Falcone or Mr. Curreri

ever ask you to make a similar adjustment for credits in the General Journal?

A. No, sir.

Q This is the first time they brought up the matter of you taking such a credit in the General Journal?

A. Yes, sir.

Q For defective cheese?

A. Right; for defective cheese, right. Of course, other entries were made for bad debts, the prior years. They said, "This account is out, they are in bankruptcy, out of business," and finally make the entry reflecting that on the journal.

Q Did you say the reason that Mr. Falcone and Mr. Curreri told you that you should take it now in 1973 was because---

MR. ANOLIK. 1974, wasn't it?

MR. ACCARDI. 1974.

Q (By Mr. Cook) I am sorry; January, 1974 was because if they had taken the bad cheese deductions in 1971, it would have placed Alburg in a bad financial situation?

A. No, sir, they didn't say that; not at that time, no.

Q When did they tell you that later, or did they tell you that?

A. No, they didn't tell me that. What they told me was. since it was the same outfit, same concern, 100 per cent owned by Falcone Dairy, that they saw no reason to take a

creditoff, and, too, since it was a legitimate credit, they should take it off.

Q You knew, of course, when you took that credit that that wiped out all assets of Alburg Creamery, is that right?

A. That is correct.

Q And, you knew that the creditors of Alburg Creamery had placed them in bankruptcy? You just testified to that.

A. Yes.

Q Could you go back to the witness stand, please?

A. Certainly.

(The witness resumed the stand.)

Q (By Mr. Cook) I show you Government's "44" which, I think, you previously described as the Falcone Dairy Products' Sales Book?

A. Yes.

Q Is that correct?

A. Right.

Q And, commencing in July of 1971 through December of 1971, as you thumb through the pages, there are various entries?

A. That is correct.

Q There are also red entries, are there not, both before--back, say, in June of 1971? I am looking on Page 73, as I happened to thumb through, red entries of twenty-five hundred, twenty-one hundred, four hundred, and matters of that sort?

A. Right.

Q There are red entries throughout the entire book, are there not?

A. Right.

Q You examined it so you know there are more red entries from July of 1971 through December than there are in the rest of the book?

A. Right.

Q But you have examined the book sufficiently to know there are red entries, is that right, in the book?

A. Correct.

Q What do the red entries normally mean?

A. Normally, they are returned cheese, or a price adjustment, or an allowance, normally.

Q You testified before a grand jury?

A. Yes, sir.

Q You were asked this same question?

A. Right.

Q And, that is the answer that you gave, right?

A. Yes.

Q And, that was in November, was it?

A. In November, yes.

Q After you went back from your grand jury testimony, did you have occasion to consult with Mr. Curreri and Mr. Falcone about what you testified to?

A. No, no. The only question was, I just wanted to make sure there was no duplication of credits.

Q Well, you did talk with them, didn't you?

A. Yes, just a visitation.

Q And, as a result of that, you wrote the United States Attorney's Office a certified letter, is that right?

A. This was prior; no discussion were had when I wrote that, which was soon after the testimony, which I said the credit in the journal could very well include defective cheese because I wasn't sure, at that time, whether that particular defective cheese could have been in this book, which is a journal. I wasn't too positive, because I didn't see this book during the period July, 1971 through December, 1971, or whether it was reflected in the Sales Book. I wasn't sure, so I wanted to amend it.

Q Let's see if I can get the questions on the record a little more orderly. After you testified before the grand jury in November, you then returned to New York and shortly thereafter, you wrote the United States Attorney's Office a letter?

A. Right.

Q Can you tell me if Government's "71" for identification is that letter? (Handed to the witness)

A. That is correct, sir. I wanted to set the record clear, you know.

Q Well, do you want to say, are you certain that this letter

was not prompted by discussions with Mr. Curreri?

A. No, sir; no, sir; no, sir.

Q Or, Mr. Falcone?

A. No, sir; no, sir; no, sir.

Q It wasn't until afterwards that you talked to them about it?

A. That is right. You know, when you talk too fast and start to think on the plane I said what it was--the question on defective cheese, could it have been in this book, or that book, and that is why I raised that question right after that.

Q Is it my understanding when you came up to the grand jury, you merely stated that the red entries in Government's "44" were due to credits, and returns, and discounts, is that right?

A. Generally, yes.

Q When you got back to New York, you didn't know whether or not there were any--when you testified before the grand jury--whether any bad cheese, as such, was covered in Government's "44," is that right, or you questioned it?

A. That would be covered by the words "returned cheese". Returned cheese is for various reasons; it could be bad cheese, or it could be anything else.

Q Do I understand then you wrote Government's "71" which was an indication if there was bad cheese it would probably be in Government's "44," is that right?

A. It could be in there. Some times, it could be in this book. You see, I wasn't sure. This particular book was not shown to me, and I didn't want to say, specifically, that it was there, if it wasn't. If I had seen this book, I would have given you the right answer at that particular time. That is why I say, generally, this book would contain price adjustments, returns, and returns could be anything. It is a wide, wild field, but I just wanted to specify that returns could have included, if they weren't included, in this General Journal. They were included in this Sales Book.

Q You were shown the Sales Book, Government's "44," before the grand jury?

A. Yes, two pages, sir.

Q It was before you, right?

A. Yes, but I didn't thumb through it. I saw this page, J-12, but I had no means of determining whether any entries were made July through December. I didn't have the facts.

Q Would you agree with me the purpose of writing your letter, Government's "71," was to show that if what Mr. Curreri and MR. Falcone had told you that the entries to support the same, should either be in Government's "43," or "44," and that was the purpose of your letter?

A. No, because I did not talk to them. I did not talk to them.

Q I am talking about the talk way back in January.

A. Yes, at that time, these credits were reflected. Actually, they were reflected in here. These credits, they were reflected. This was at the time of the entry, yes, sir.

Q Would you look at Page J-11 of the General Journal?

MR. ANOLIK. What Exhibit is that?

MR. COOK. Government's "43".

Q (By Mr. Cook) And, there is an entry ten, nine, five, two, two, two. Are you able to explain that to me?

A. Yes, sir. This is known as a "wash" or "contra entry". Now, Alburg, at times, would sell some, maybe supplies to Falcone Dairy, and Falcone Dairy would sell Alburg some supplies, so that on one set of books on Falcone Dairy, they were having an account, let's say, due from Alburg for supplies. Let's say, Alburg would have probably on their books, due to Falcone for supplies. So, in view of the fact that it was a contract you bought from Alburg--Alburg owed you money--but you owed Alburg money, then you off set one against the other.

Q Did this have anything at all to do with the credit of $210,000 that Falcone took on Page J-12?

A. I don't think so; I don't think so.

Q How about the next item, 22,000?

A. Well, that is a little different here.

Q Twenty-two thousand, three hundred seventy-five. Did that have anything to do with it?

A. I don't think so, no. This was an item where we received some money from Alburg as a loan, and then it was transferred from a loan, and we put it into an accounts payable, meaning we owed Alburg 22,000 transferred from a loan to another liability. Let's put it that way. Just a wash entry. It doesn't mean anything, really.

Q I show you a book marked Government's Exhibit "45," which is an Accounts Payable, I believe, of Falcone Dairy, is that right?

A. Right.

Q Would you look at this page I have opened to, and would you see whether or not Alburg is charged any part of that $210,000 credit that Falcone took on January 31, 1974?

A. It doesn't appear on this page, but it appears on another page. See, this particular page here transfers the balance, 172,000, which is transferred into another page, you see.

Q Is that 172 or 179, you know your writing better than I do.

A. It is 172. This was transferred to another account. You see, the balance of the account, at this time, was 172,000, so they started a new page. So they closed out the 172,000 and put it on another page.

Q Let me ask you a question. First of all, that entry would

have had to been made some time, maybe early in 1974, would that be right?

A. It could have been made in 1974; January or something.

Q It would be after January.

A. I don't know.

Q Let me ask the question. Would it be after the entry in the journal, or about the same time as the entry?

A. Maybe about the same time.

Q Well, before we leave that I want to ask you a question. That $172,000---

A. Was the balance figure.

Q Just a second--which you have charged against accounts payable to Alburg---

A. It is not a charge. It is just a transfer from Alburg at Page 1, let's say, to Alburg, Page 2. It is not a charge at this point. We are getting to it.

Q It is on its way to being a charge?

A. It is on its way, yes.

Q And, you did make that entry of 172?

A. I didn't make that entry. This is the girl's handwriting which transfers it to another page.

Q But regardless of who made it, the records of Alburg, or Falcone, show that that is part of the $210,000, is it not?

A. Naturally, it shows up as such, yes.

Q Following it through the rest of the way, if you will, please,

and tell me what book are you referring to?

A. Same book.

Q Which is what?

A. Which is Exhibit "45," and I believe it was put in the miscellaneous page, if I can find it here; 172,000 transferred, see? Now it went from here into here. (indicating)

Q So what you are saying is that 172,000 out of the 210,000, representing bad cheese, was transferred to the miscellaneous section of Accounts Payable, and how is it reflected there?

A. It shows at this point we owed Alburg 172,000. At this point, it is the same as this. This page shows we owe 172,000. It was transferred to another page, and it doesn't change.

Q Is it eventually balanced out?

A. The 172 is offset by the $210,000 defective cheese, see?

Q On the same page?

A. On the same page.

Q Is that entry in your handwriting?

A. No.

Q This was an entry that must have been directed by you?

A. No. It was made by the bookkeeper.

Q I understand, but does the bookkeepers have that, normally, within their knowledge?

A. Probably she wanted to close out the account and put it

into a new page.

Q You don't think you would have told her to make that entry?

A. I don't know. I don't think so; I don't think so.

Q In any event, Government's "45" clearly shows that according to Falcone Dairy's books, that out of the $210,000, $172,000 of credits to Alburg were cancelled out?

A. They were cancelled out.

Q By the entry which originated on Government's "72" up there on the board, is that right?

A. That is right. As a matter of fact, since the credit was more than the amount owing, Alburg owed Falcone the balance.

Q In fact, how much was that balance?

A. Well, according to the books here, it is 210,000 against 172,000--about 37,000.

Q So you say because of that, instead of Falcone owing Alburg 172,000, because of the $210,000 credit for defective cheese in 1971--the last six months of 1971--Alburg ended up owing Falcone?

A. As per the books.

Q As per the books. Now, once again, your whole knowledge about whether this cheese was defective, or not, comes from either Mr. Joseph Falcone or Mr. Curreri, isn't that right?

A. Right; outside of what I heard during those years.

Q I didn't ask you what you heard.

MR. COOK. I move that be stricken. Can we have that part stricken?

MR. ANOLIK. I object to it being stricken.

THE COURT. Let me hear the question and answer.

(The reporter read the last question and answer.)

THE COURT. We'll let the answer stand.

Q (By Mr. Cook) With regard to the instructions given you on January 31, 1974 which provided the basis for you making the entry, your instructions came solely from Mr. Curreri and Mr. Falcone?

A. That is right, sir.

Q And, they were the only people, at that time, to give you the explanation about any defective cheese?

A. Right.

Q And, once again, you had never been instructed to take such a credit for defective cheese for prior years 2-1/2 years after the event?

A. No, because that was done---

Q You answered it.

MR. ANOLIK. I object.

THE COURT. He asked for a "Yes" or "No," and the answer is "No". You may examine on it.

MR. ANOLIK. Thank you, your Honor.

Q (By Mr. Cook) You had,occasion, did you, while accountant for over the many years for Falcone Dairy Products, to have access to their shipping records of cheese from the plant, from the manufacturing plant to Brooklyn?

A. No. I think they were there, but I didn't delve into them.

Q Well, is it fair to say, Mr. Accardi, these weren't just books to you? You had a fairly good idea of how Falcone Dairy Products operated, did you not?

A. Yes, they would get bills. From the latter part of 1970 through the time they were in operation, Alburg would bill Falcone Dairy for cheese.

Q You also were aware of how the transportation of cheese came from Alburg, Vermont, to New York City?

A. It came by trailer load, generally; yes.

Q It has appeared here in evidence, I believe, all the shipments in evidence are F.O.B. Alburg. Does that mean something to you, as an accountant?

A. Yes, they did pay for the trucks. They paid the truckman for delivering the cheese from Alburg to Brooklyn, yes.

Q And, the title to the cheese would pass when delivered to the truck?

A. Right; F.O.B., yes.

Q Now, entries of this type, you say you questioned the one on January 31, 1974 within a few days thereafter. Can you

recall during the period of say 1972, or 1973, did you seriously question to Mr. Falcone or Mr. Curreri any other entries that you made?

A. No.

Q Would you find me Page 2 of the General Journal? I think you can find it more readily than I can.

MR. ANOLIK. I would appreciate it if you would refer to the exhibit.

THE COURT. Give the exhibit number.

MR. COOK. Government's "43".

A. Page 2, yes, sir.

Q (By Mr. Cook) Now, I would like to direct your attention to Page 2 of Government's "43", which is the General Journal, which appears to be a page of entries made about December 31, 1972. Is that a fair statement?

A. Right.

Q And, would you tell me--I am looking at about seventeen or eighteen lines down--there is an entry which states "Investment in Albany Creamery, Inc., $301,738.77. Now is that entry in your handwriting?

A. That is correct.

Q I think you have testified previously that all the entries in Government's "43" are in your handwriting?

A. Yes, sir.

Q To go on, right underneath that particular entry of "In-

vestment in Alburg Creamery, Inc. of $301,000 some odd dollars," you have also written "unrealized appreciation and investment in Alburg Creamery set up--unrealized appreciation and investment in Alburg as determined by Falcone as follows: Value, $360,000 less cost of investment, $56,261.23". $301,738.77. Can you tell me what was that entry supposed to reflect?

MR. ANOLIK. Your Honor, I would like to approach the bench at this time.

THE COURT. All right.

(At the bench)

MR. ANOLIK. I have to voice an objection to the manner of the interrogation here, because while I have no objection to him asking the questions, as a witness, this is a Government witness, and it appears to me he has exhibited no hostility. Yet, the nature of the question appears to be as if he is attempting to impeach this witness, and I object to this, your Honor, impeaching their own witness.

MR. COOK. Under the new rules, the Government is given great latitude.

THE COURT. Not Government rules.

MR. COOK. Federal rules, I should say.

THE COURT. Yes, you can impeach your own witness. I think pretty much the federal rules allow impeachment of your own witness.

MR. ANOLIK. I am aware of that, but the point is that it seems Mr. Cook is making somewhat of a display in front of the jury as to, well, didn't you do this, and didn't you do this, and I feel, your Honor, while if your Honor is going to permit the impeachment, which I know the Government raises, your Honor can, in your discretion, permit, it appears to me, the witness to give a complete answer.

THE COURT. Yes, I am inclined to agree. We'll note your objection, and I don't think Mr. Cook's questions indicated that he is excessively hostile to the witness.

MR. ANOLIK. What I am referring to, specifically, your Honor, is that it appears to me this witness, who is a slow talker, as you can see, after he gives a "Yes" or "No" answer apparently wants to go on to explain it. Now your Honor has ruled, of course, I can go into that, but since, apparently, he is supposed to be an expert, I may not be able to pick up the threads, you see, if he doesn't give the answer right now. I think he should be permitted to give the complete answer, which, apparently, he would like to do. He talks so slowly.

THE COURT. Has he answered the pending question?

REPORTER. No, your Honor, he has not.

THE COURT. The question is still outstanding, Mr. Cook. You understand the nature of the objection?

MR. COOK. Yes, I do, your Honor.I think this witness is somewhat hostile, your Honor. He worked for the defendant for twnety years. I think the Government should be entitled to lead, to a certain extent, and get the whole truth before the jury, and I find it is a little bit difficult. I point out the fact it has appeared here in evidence that there has been an explanation of grand jury testimony and matters of that sort, but I don't want to waive the Government's right, as I think we are entitled under the new Federal Rules of Evidence to get the whole picture before the jury.

THE COURT. We'll take this answer, but I think we will take our morning recess at this time.

(End of discussion at the bench)

THE COURT. We'll take our morning recess at this time, ladies and gentlemen, and I would like to see counsel in chambers, if I may.

(Court recessed from 10:45 - 11:07 a.m.)

THE COURT. Proceed, Mr. Cook.

MR. COOK. May the pending question be re-read, your Honor?

THE COURT. Yes.

(The reporter read the pending question.)

A. This entry reflects an increase in the market value of Alburg Creamery due, primarily, to increase in the value of building, increase in the value of machinery. Now, this

entry was made because of the following reasons: In December, 1972, Falcone Dairy needed money; Alburg Creamery needed money. They wanted to borrow money to help the operations.

Q (By Mr. Cook) Who is "they"?

A. Falcone Dairy and so on. So, they tried to get loans through various sources. They contacted various loan brokers. The banks would not give them too much money. They engaged several attorneys, or loan brokers, to try to to get a loan for them on the strength of Falcone Dairy Products, Inc. statement. Every one refused them, and an attorney by the name of Jack Arnold suggested that we incorporate Falcone Dairy Products.

Q Whose attorney was he?

A. Falcone Dairy Products' attorney. He was called into the picture to try to get Falcone Dairy a loan, and he suggested in view of the fact many outfits refused Falcone Dairy a loan, he suggested that we incorporate all the permanent assets and other interests of either Falcone, the Falcone boys, or the Falcone Dairy Products, Inc. and incorporate everything into this particular statement.

Q Did you meet with their attorney?

A. Yes.

Q Did you meet with Mr. Falcone there?

A. Yes, Mr. Joe Falcone was there.

Q Was Mr. Curreri there?

A. I don't think he was there.

Q Are you sure?

A. I am pretty sure he was not there.

Q Mr. Joseph Falcone was there?

A. Yes.

Q Go ahead.

A. Now, Mr. Joseph Falcone and I did not like to incorporate these entries into the books.

Q Did you want to exhibit them somewhere else?

A. Just on a work sheet without reflecting them into the books, because the loan may never go through, and we would have to cancel out all these entries, but the attorney says, "Look it is better if these items are on the books. If some one from the bank or some other loan organization comes in and sees it on the books, it looks better". I said, "Okay, I will put them on the books on one condition. If the loan goes through, and I am qualifying everything I put here, these entries will not stay on the books unless it is legally transferred in all respects; that the entries in the value of Alburg is backed up by appraisal of the building, of the machinery, and so on; the land that the boys owned, personally, was to be transferred". I said , "I would want an appraisal and a legal transfer of title from the boys to Falcone Dairy and so on." I would only

do it on that condition, and, as a matter of fact, all these entries substantiate what I did.

Q So the record is clear, you have been talking about this $301,000 in Government's "43" throughout the last five minutes or so of your testimony?

A. That is correct, sir.

Q And again, that was an entry reflected on the books of Falcone Dairy's General Ledger to show an increase, show an appreciate change increase of about two hundred forty some odd dollars?

A. A $300,000 increase from three hundred sixty to--- $58,000 to three hundred sixty; 58,000 being their original investment in property at Alburg, and that investment of 58,000 now retains 360,000 because the building and machinery was worth more money. They improved the building, extended the building, and so on.

Q And, you say it was your idea and Mr. Joseph Falcone's idea not to put these in the books?

A. We would put it in only if we got the loan, and the loan was consummated.

Q I take it, the attorney won out?

A. He won out. He says, "Let's put it on the books. If some one comes from the loan office and sees it on the books, it looks better".

Q There did come a time, did there not, when you added that

$300,000 in appreciation shown in Government's "43" off the books?

A. Right.

Q When did you take it off the books?

A. I took it off at the end of our fiscal year.

Q How many months after you put it on did you take it off the books?

A. Five months; from December 31st to May 31st, which is five months. Now, of course, technically, they may not have gotten the loan say, probably as of maybe February or March, the loan didn't go through. I didn't take it off then. I waited until the end of the year.

Q The quarter?

A. End of the fiscal year.

THE COURT. What year are we talking about?

MR. ACCARDI. The fiscal year ended May 31, 1973.

Q (By Mr. Cook) So this record may appear clear here, the only original entry increasing the appreciation $310,000 appears it was made about December 31, 1972, right?

A. Correct.

Q And, that is on Page 2 of the General Journal which is Government's "43," is that right?

A. That is correct.

Q And, then you took it off on Page 5 of the General Journal,

Government's "43," on or about May 31, 1973, right?

A. Right; at the end of our fiscal year.

Q So what you really did was cancel it out?

A. Right.

Q Now I show you a couple of exhibits marked Government's "39" and Government's "40," which have been identified as Accountant's Reports, and I believe they are financial statements for quarters ended September 30, 1972 and December 31, 1972, and I would ask you if you would look at them, first of all, please. (Handed to the witness)

A. Okay.

Q I think you probably know these were probably prepared by accountants for Alburg Creamery, Inc..

A. That is right.

Q During the periods that Government's "39" and "40" so indicate?

A. Right.

Q Is there anything in these financial statements, Government's "39" and "40", the accountant's statements of affairs, which would in any way justify an increase in the assets for appreciation purposes of Alburg Creamery of $300,000 during the period of say September through December 31, 1972?

A. Yes, there is. December 31, 1972, there is a cost value of land and improvements, and the building, and the

machinery and equipment, and some furniture which added to $227,000, which is a cost figure on the books. Now the value of the building and machinery to replace, was valued at a higher figure marketwise, and if we increase the land, let's say, increase the land $50,000, and I will increase the building $100,000, the machinery another $100,000, there could be an increase of $300,000. You have to realize that when the building was purchased way, way back, it was bought at a very low value. Alburg, I understand, was a depressed area.

Q You have just been looking at--it doesn't have a page number, but it is Schedule A, I guess it is, of Government's "40"?

A. Yes, sir.

Q What does accumulated depreciation in the amount of almost $70,000 indicate?

A. Accumulated depreciation represents depreciation taken from the inception of the purchase to date.

Q So from those figures you just quoted us, you immediately have to deduct approximately $70,000, don't you?

A. Yes, sir. That is only a book figure for depreciation purposes. It has no bearing on the value of an asset. In fact, the only way you can tell value of a building is to have it appraised, regardless of what it shows in the statement.

Q It is a fact that the book shows that $70,000 of depreciation had already been taken?

A. Through the correction, correct.

Q So the figures that you just quoted in the amount of two hundred twenty some odd thousand dollars, you immediately have to deduct about $70,000 which brings it down--I don't know if my estimate is right--around $150,000?

A. That is right.

Q It is not 301,000 or $350,000. That is correct, isn't it?

A. That is correct.

MR. COOK. That is all I have.

THE COURT. Mr. Anolik.

MR. ANOLIK. Are you finished?

MR. COOK. Yes.

MR. ANOLIK. I am sorry, I didn't hear you say you were.

CROSS EXAMINATION

Q (By Mr. Anolik) Mr. Accardi, you are the accountant, or you were the accountant during these years?

MR. COOK. Your Honor, I hate to interrupt but there is one exhibit I didn't offer in conjunction with the testimony.

THE COURT. The letter?

MR. COOK. Yes.

THE COURT. Have you seen the letter?

MR. ANOLIK. Yes, I have. No objection.

THE COURT. Seventy-one is admitted.

(Government's Exhibit "71" was received in evidence.)

MR. ANOLIK. May I proceed, your Honor?

THE COURT. Yes.

Q (By Mr. Anolik) Mr. Accardi, during these years, you were the accountant for Falcone Dairy, is that correct?

A. That is correct.

Q Now when you testified before the grand jury, would it be fair to say you were there pursuant to a subpoena?

A. That is correct.

Q And, did you have a lawyer with you, at that time?

A. No, sir.

Q Now inside the grand jury room, you had no lawyer either, did you?

A. No, sir.

Q There was no judge there, was there?

A. No.

Q And, there was only an assistant United States attorney and the grand jurors, isn't that true?

A. Correct.

Q And, you were shown such books and records as the assistant United States attorney chose to show you, isn't that true?

A. Correct.

Q Were you given a chance to just talk at length and explain everything as long as you wanted, or did you just answer his questions?

A. I answered questions, but, primarily, I answered questions.

Q You mentioned the fact that you wrote a letter, Exhibit Number "71"?

A. Yes.

Q And, you indicated there, did you not, since it is in evidence I can refer to it, you concluded by saying "In order to obtain the facts for all parties concerned, I would be glad to go over the pertinent books with you, should you determine it necessary"?

A. Right.

Q Were you ever asked to do that?

A. I was never asked.

Q I see. So, in other words, as a result of this letter, you were never called back to explain?

A. No. The words "returned cheese" bothered me in the sense even though defective cheese is returned, I wanted to be a little more specific, and for that reason, I wrote the letter.

Q I see. Now you were also asked questions about the entry of $210,711.05. Do you remember that?

A. Right.

Q If the jurors want it closer, I will bring it closer. Apparently, it is not necessary. You can see the entry all right, can't you?

A. Yes. I know it by heart, now.

Q Okay. Now, that entry, you had a conversation, did you not, with Mr. Curreri and Mr. Falcone at that time?

A. Right.

Q And, is it not a fact that during the years that you had represented Falcone Dairy, you were present when there were many conversations by Mr. Falcone and Mr. Curreri concerning the quality of cheese? Isn't that true?

A. Absolutely.

Q What were the substances of these conversations?

MR. COOK. Object; self-serving.

A. They were having a lot of trouble.

MR. ANOLIK. He is a Government witness.

MR. COOK. This is hearsay.

MR. ANOLIK. Hearsay does not affect the defendants, your Honor.

MR. COOK. It is self-serving and hearsay.

MR. ANOLIK. Hearsay cannot be an objection by the Government. We have a right of confrontation, and they don't, under the Sixth Amendment. Your Honor, it is hearsay to them, not to us; yes, as to us, not to them, and we are waiving that.

MR. O'NEILL. They are admissions to the defendants, but they are self-serving statements as to the defendants. The Government can no more bring--the defendant can no more bring in his own statement and offer it. We can offer it; it is hearsay to us, also.

THE COURT. Come to the bench.

(At the bench)

MR. ANOLIK. Your Honor, the hearsay rule is one which affects a defendant, since the defendant alone has the right of confrontation. The Government does not have the right of confrontation. We have a right to waive that. This is not self-serving because of the fact he is a Government witness, your Honor, and I am now in cross examination. He wants me to adopt this witness as my own. I can cross examine him on anything he brought out. So what he is trying to do now, having brought out a form aspect of a fact that leaves an impression upon the jury, he is now foreclosing me from explaining it, which, I think, would be a destruction of my right of confrontation in cross examination.

MR. O'NEILL. To the extent Mr. Anolik is asking about something that has been brought out by us, an explanation is necessary, we agree he is entitled to do that, but he can't bring out statements as made by the defendants in a normal context. It is simply hearsay. It sounds anomalous, but it is within the rules the statements made by the defendants,

which we offer, are all hearsay. We make no claim they are not, but they are all admissions. For the testimony to come in on their own are simply self-serving statements. They can't put in a statement like that any more than a defendant can write out a statement and hand it to the jury.

MR. ANOLIK. In his antilogy motive, there was no motive at that time to effect litigation. They were not defendants at that time, and this is completely relevant to show the context.

MR. COOK. Lastly, I didn't go into that. I limited my examination of Mr. Accardi to the events that precipitated January 31, 1974. I didn't go back. I specifically objected when he wanted to talk about the history of any complaints about defective cheese back in 1969 and '70.

MR. ANOLIK. You will recall, your Honor, however, that your Honor told me when I made a particular objection he was not being permitted to answer, you said, "Mr. Anolik, you will have a chance to go into that on cross examination," and that is what I am trying to do.

THE COURT. That was not the particular question. He tried to volunteer, and we let that particular answer stand.

MR. ANOLIK. That is correct, your Honor.

THE COURT. Well, I don't think there is any question but what you can ask him whether or not there were

conversations, but it is the substance of the conversations that seems to be in dispute at the moment, is that correct?

MR. O'NEILL. That is correct, your Honor. We questioned about the January 31st entry, if there were conversations right there. We think it pertinent to ask about those, but he can't go back and say, "In 1971, did you discuss bad cheese with them".

MR. ANOLIK. This is a conspiracy case, your Honor, and the Government's theory is---

THE COURT. The conspiracy doesn't relate back to 1971.

MR. ANOLIK. No, but there are cases holding, your Honor, that if there was any motive to do anything improper, and they are bringing out facts that occurred in 1971, "Why didn't you take it in 1971 or 1972," we have a right to show that these are legitimate entries. They are trying to question the legitimacy of these entries, your Honor, and this is why I have a right to bring out through this witness, not a party to the action, that these were legitimate; before any litigation arose, they were complaining about it.

MR. O'NEILL. This is an attempt to have the testimony of the defendants come in without their taking the stand.

THE COURT. I appreciate that.

MR. ANOLIK. I have something in my briefcase

that will help you, your Honor, if you wish to see it.

THE COURT. Yes.

(Mr. Anolik handed the Court a document)

THE COURT. Well, that may be helpful, Mr. Anolik, but it says "any given application". I think it is the application under question here.

MR. ANOLIK. That is an analysis of the Federal Rules of Evidence, your Honor.

THE COURT. Well, I will sustain the objection. I am not sure.

MR. ANOLIK. To protect the record, I will ask for a mistrial on the ground I am not being provided---

THE COURT. Now you may protect the record by asking for a mistrial. I am not 100 per cent sure of my ruling. I am frank to admit that. Proceed.

(End of discussion at the bench)

THE COURT. Counsel return to the bench, please.

(At the bench)

THE COURT. I guess I didn't say it, but it goes without saying your motion for a mistrial is noted and denied.

MR. ANOLIK. I understand that.

(End of Court's ruling at the bench)

Q (By Mr. Anolik) Now, Mr. Accardi, when you had this con-

versation concerning the entry of $210,711.05, you stated that the explanation given to you was that it was for credits which they had to give to various customers in 1971 because of a defect in the cheese, is that correct?

A. That is right.

Q And, did they indicate that the defect, in their opinion, was as a result of, perhaps, polluted water, or something of that sort?

A. The word "polluted" was used; polluted from the pond, the lake, from the source.

Q You didn't go into the technicalities of why they gave the credits, all you know is that the credits had been given, is that true?

A. That is right.

Q You were not interested in the engineering, or scientific, explanations for the quality of the cheese, were you?

A. No.

Q You were interested in the accounting aspects of the problem?

A. Yes. I only wanted them to explain their entries in substantiating that $210,000.

CHIEF DEPUTY CLERK LAFAYETTE. Defendants' "E" for identification, Breakdown of Credits Given in 1971 to Customers for Cheese.

Q (By Mr. Anolik) I show you Defendants' "E". These are

photostats, of course. Do you know what that is from? (Handed to the witness)

A. That is an extract from the Sales Book.

Q Would that be from Exhibit "45," Mr. Accardi, the extract?

A. It would be from the large book.

Q Which one is that? This one here, you mean? (indicating)

A. Yes.

MR. O'NEILL. May we approach the bench for a moment?

THE COURT. Yes.

(At the bench)

MR. ANOLIK. Those are photostats we took.

MR. O'NEILL. The Court may recall in chambers, before this case began, the Government specifically asked for any papers, books, documents, and records that the defendants had, pursuant to the Rules of Discovery, so the Government could examine them. We were furnished with a set of invoices, which I am pleased to say we were allowed to make copies of; no complaint about that. We specifically indicated that we had a desire. Apparently, there was a list of various customers, and they are talking about this adding machine tape, and we specifically asked for it, and they said it was not in existence. We haven't seen this document, previously.

MR. ANOLIK. These are from their own exhibit.

MR. O'NEILL. I understand that, your Honor, but we specifically asked for the documents. We haven't seen that paper before; that tape before.

MR. ANOLIK. As far as I know, they saw the tape. This is what Mr. Wool had.

MR. O'NEILL. This is the first time we have seen the tape.

MR. ANOLIK. It is merely an adding up of figures, your Honor. Isn't this the tape that Joe Wool had to calculate?

MR. MURDOCH. I don't know if it came from our files or not.

MR. ANOLIK. This is the tape of the circled items, your Honor, from the book.

THE COURT. You can't complain about that.

MR. O'NEILL. I understand, your Honor, but this is the first time I heard anything about the tape.

THE COURT. Take the tape off, for the time being.

MR. ANOLIK. I don't see where this is a failure to supply them. We went out of our way to supply them with items they already had. I have seen the book in their possession, and I don't see how the tape influences for a numerical recollection of the figures. Otherwise, this guy will have to stay here three hours trying to figure this out.

THE COURT. I don't know what the tape is.

MR. ANOLIK. Merely a computation of the items.

MR. O'NEILL. Who made up the tape?

MR. ANOLIK. I assume it was made up in the office.

MR. O'NEILL. This is what we specifically asked for.

THE COURT. Take the tape off and mark it as "F" and let him testify.

MR. ANOLIK. Okay. Let me leave it on. I will mark it "F" for identification. The jury hasn't seen this any way.

(The tape was marked Defendants' Exhibit "F" for identification.)

(End of discussion at the bench)

THE COURT. I want further foundation on that, as far as that is concerned.

Q (By Mr. Anolik) You have examined that book?

A. Right.

Q Exhibit "F" for identification, which is a tape, what does the tape represent? Can you tell me? (Handed to the witness)

A. An addition of all the sales.

Q It is nothing separate and apart, just an addition of all

the sales?

A. Yes, on this tape.

Q Who made the tape?

A. I don't know.

Q One of the girls in the office?

A. Probably.

Q It doesn't contain material not on these pages?

A. Well, I will have to check it out. I see 32,023; I see 34,240.

THE COURT. Is that an itemization?

MR. ACCARDI. I think that is all. Here is ninety-four hundred.

THE COURT. Show it to Mr. O'Neill. Let him check it.

MR. ANOLIK. It is just an itemization, that is all it is I would like to offer the tape.

MR. COOK. I would like to inquire.

MR. ANOLIK. Sure, on voir dire?

MR. COOK. Yes.

Q (By Mr. Cook) Mr. Accardi, I think it has been your testimony you don't know who made up the tape?

A. That is correct.

Q Have you checked for certain to determine whether or not the entries which are made on the tape, which is Defendants' "F", are reflected somewhere else, either in the Sales Book

or some other place?

A. I have no way of knowing. This is a tape of all the credits.

Q How do you know that Defendants' "F" are all the credits?

A. Because they are circled, or in red.

Q Can you represent to us that Defendants' "F" is a list of credits for a certain period of time?

A. This is a list of credits for this particular month of July, 1971.

Q July of 1971?

A. That is correct.

Q And, how do you know that?

A. Because they have entered it as credits.

Q Where?

A. In the Sales Book.

Q And, can you tell us this morning that you have checked that out? Do you know the accuracy of this?

A. No, I did not trace the credits into the customers' ledger, if that is what you mean, but this is a balance, and at the end of the month it jives out arithmetic-wise.

MR. COOK. Just a moment. Your Honor, unless these are checked out, I don't think this witness has given testimony that would support the admission. Hence, we would have to object to them.

THE COURT. Let me see them, please.

MR. COOK. They may be accurate, but we would like to make sure.

MR. ANOLIK. I have no objection to their checking it out.

THE COURT. We can do that after. Counsel get together, however they want, and check the balances at some time.

MR. ANOLIK. Subject to any amendment, can we, at least, let the answer stand that these are just a total of the credits for that particular month, your Honor?

MR. COOK. We can agree, subject to motion to strike.

THE COURT. Right; let's handle it that way.

MR. ANOLIK. I will stipulate if the adding machine made a mistake, we'll correct it later on, but at any rate this would reflect the credits for the month of July, 1971.

Q (By Mr. Anolik) Is that correct, Mr. Accardi?

A. That is correct, sir.

Q That is merely a total, is that correct?

A. That is right, of the credits.

Q And, each month there was a similar tape made up to add up the total number of credits, is that correct?

A. I haven't seen it, but I know. Yes.

Q Looks like this? (indicating)

A. That is correct, sir.

Q So unless the adding machine made a mistake, that would be accurate?

A. Right.

Q And, you were shown the books, were you not, to substantiate the amount of credits they were planning, isn't that true?

A. Yes. I saw the adding machine tape which added up to $210,000.

Q And, this is a photostat of the pages of Exhibit Number "44"?

A. That is correct, sir.

Q So, in other words, these pages are photostats from this book, isn't that right?

A. That is right, sir.

Q You have been visiting this company on a monthly basis for years, isn't that true?

A. Right.

Q And, these books were kept in the regular course of business, were they not?

A. Right.

Q And, you audited those books every month, didn't you?

A. Well, I summarized it.

Q You summarized it, but you saw the books, right?

A. Right.

Q Do you happen to know whose handwriting this book is in?

A. There is more than one person.

Q Any idea who they might be, from your experience, if you know?

A. Well, Mrs. Lustig is one; Katherine Falcone was one of the girls. Those are two that I recognize.

Q All right, but this is the book you saw each month, isn't that so?

A. That is correct.

Q And, you recognize the book, do you not?

A. Right.

Q Fine. Now, Mr. Accardi, the credit which was taken in 1973---

A. 1974.

Q 1974, rather, was an unusual item, is that correct?

A. Right.

Q Now, is it not a fact that you were told by Mr. Curreri and Mr. Falcone that they had sought the advice of a lawyer, Mr. Wool, before taking this credit?

A. They said they had leg al counsel, to the effect that it is legitimate credit and should be taken off.

Q Now additionally, Mr. Accardi, you were familiar, were you not, with the general business of Falcone Dairy through the years, were you not?

A. Right.

Q And, you knew about Alburg's situation as well, did you not?

A. Right.

Q In the event a credit such as this had been taken in 1971, what would that have done to the cash flow of Alburg Creamery?

A. Well, Alburg Creamery would have less assets, and it would weaken their position, actually.

Q And, it might have put them out of business, isn't that true?

A. Oh, yes.

Q Now, as a matter of fact, Falcone depended, from your knowledge of the business, upon Alburg Creamery to a great extent for its supplies, isn't that true?

A. Right. They were the major source of supply.

Q And, actually, Alburg Creamery was owned by Falcone Dairy, isn't that true?

A. That is right.

Q So when this credit was taken in 1974, did you find it necessary at all to amend the tax returns of Falcone Dairy?

A. No.

Q Would you explain to the jury why you didn't find it necessary?

A. Because for the fiscal years ended May 31, 1972 and May 31, 1973, Falcone Dairy incurred operating losses of $322,000, and if they had $210,000 credit, that would reduce the loss from 322,000 to $112,000. In effect, it would

be a loss, and there was no purpose in filing amended returns because the losses of subsequent years would eat up any profit as a result of this credit in the previous years.

Q So there was no necessity for amending any tax returns?

A. No. Technically, you should file am amended return that would have required a tax, but they were in such financial trouble they would never be able to get the money to pay the tax, and then wait for the credit.

Q Now, as a matter of fact, if you know, Falcone Dairy did not participate as a creditor in the liquidation, did they?

A. No. As a matter of fact, there was a balance, I understand. I don't know if that was put in a claim, a $37,000 balance, or some such figure.

Q As a matter of fact, there has been testimony from the trustee they did not put in a claim. Does that jive, from your recollection?

A. Yes, I heard that said.

Q Now, Mr. Accardi, you mentioned Lido, which was a company that you said was also in the same building as Falcone Dairy?

A. Right.

Q They were not a manufacturing operation, were they?

A. No, jobber trading.

Q To retail, is that correct?

A. Right.

Q So, they were not in the manufacturing end at all like Falcone Dairy?

A. Right. As a matter of fact, Falcone Dairy was not manufacturing either, with the exception of some minor items.

Q Alburg Creamery---

A. Was the main manufacturing plant.

Q Right. By the way, had you ever been up to Alburg yourself?

A. No.

Q Now, you had mentioned the fact that some attorney, in order to obtain a loan from the bank, had recommended certain personal assets of Falcone go into Alburg, is that what you indicated, or into Falcone Dairy?

A. Into Falcone Dairy.

Q Now, in other words, is it fair to say that Mr. Falcone was ready to put up his own personal assets to justify a loan?

A. Absolutely. In fact, whatever interest they had, from whatever source, they were willing to put in to guarantee a loan so they could keep Alburg and Falcone Dairy in operation.

Q So, in other words, they were not trying to do anything improper? In fact, the contrary was the case, isn't that true?

A. No. As a matter of fact, I told them to do that some years ago, but they kept on putting fresh money after fresh

money into it and couldn't give up.

Q They were throwing in their own money, isn't that true?

A. Right.

Q As a matter of fact, did the loan ever come through from the bank?

A. No, not as a result of this particular appreciation of value of Alburg, the loan never went through, and as a result of that, the particular entry was taken off the books.

Q Because there was no need then to lend Alburg this additional money, isn't that true?

A. Right.

Q Because it would not justify a loan under any circumstances?

A. Right.

Q I just wanted to have you explain that to the jury that this was not an improper suggestion in any way, shape or manner, was it?

A. No.

Q Now, you were also asked questions concerning the accounting aspects of keeping the books and records of Falcone Dairy. You were familiar with the way the books and records were kept, were you not?

A. Right.

Q Now, those books and records, were they kept in the regular course of business in a proper manner?

A. Yes.

Q There was an accounts receivable girl and an accounts payable girl?

A. Yes, but some times they would interchange.

Q Right, because if one was out the other would help the other one out?

A. Right.

Q But, basically, you were there every month to make sure they were keeping them in accordance with proper accounting techniques?

A. Right.

Q What did you do at the end of each month with respect to the books and records?

A. I summarized them. I made a monthly summary of all the transactions for the month. All the written and detailed work was done by the bookkeepers and clerks.

Q You are a Certified Public Accountant in New York?

A. Right.

Q Would you explain what a Certified Public Accountant in New York is concerned as far as getting an educational background? What was necessary to get that degree?

A. You have a four-year degree, and then three years experience before you can take your examination, in those days, and pass four parts of the examination which includes theory of accounting, auditing, commercial law and problems.

Q And, you passed all those?

A. Right.

Q You are now certified by the State of New York?

A. Correct.

Q Can you tell me whether or not Falcone was your only client?

A. No.

Q How many clients do you have?

A. At that time, a dozen or so.

Q And, they were merely one of your clients, isn't that so?

A. That is correct.

Q You went, I suppose, on other days to other clients, isn't that true?

A. Right.

Q Were they all in the cheese business?

A. No; electronics, welfare pensions, trucking, ravioli.

Q Varied businesses?

A. Yes.

Q Were you ever asked to do anything improper by Mr. Curreri or Mr. Falcone?

A. Never.

Q Now, would you explain what you meant by the appreciation of the building, for example. The building was acquired at a rather low price originally, is that correct?

A. That is correct.

Q Would that be the same--if I just lead him a little bit,

your Honor---that a building bought twenty years ago, today might be worth a lot more for replacement?

A. Today, it would be worth a lot more. In fact, most residential property has gone up maybe 8 per cent a year or thereabouts. Commercial property, I don't know, but they have gone up through the years.

Q So you were able to enter the appreciated, or replacement value, is that correct?

A. That is right, because the inflation on a building like that, or to replace the machinery, would maybe cost you twice as much.

Q Certainly, at least twice as much?

A. Yes.

Q So, therefore, the entry was not an improper entry?

A. No.

Q That was in accordance with proper accounting techniques?

A. Of course, it had to be backed up by appraisals.

Q And, you asked for an appraisal. Do you happen to know whether or not Falcone Dairy was investing in a modernization of the Alburg plant?

A. Yes. I think they borrowed some money to extend the plant, improve it, yes.

Q And, that was before the fire occurred, isn't that true?

A. Oh, yes.

Q Now I think it was Mr. Cook who asked you whether or not

the $210,000 credit that was taken wiped out all of the assets of Alburg Creamery. Is it not a fact, that it did not wipe out all of the assets, but only the accounts receivable?

A. It wiped out the accounts payable of Alburg, 172 against 210, leaving a figure of $37,000 that Alburg owed Falcone Dairy.

Q But it did not affect the bank mortgage, did it? In other words, it did not wipe out the value of the Alburg land, or any of that?

A. Oh, no. It had no bearing on any other assets.

Q It didn't wipe out the insurance or anything, did it?

A. Oh, no.

Q And, this was based upon actual credits which were given during the 1971 period, isn't that true?

A. That is true, according to their statement.

MR. ANOLIK. Your Honor, I ask this be marked as a joint exhibit, if we can. I hate to mark each page separately, your Honor.

THE COURT. What are they?

MR. ANOLIK. These are the actual slips, your Honor, reflected in that journal.

CHIEF DEPUTY CLERK LAFAYETTE. Defendants' Exhibit "G" for identification are slips reflected in Government's Exhibit "44".

Q (By Mr. Anolik) I show you Defendants' Exhibit "G" for identification and ask you whether or not these slips justify--by taking a quick peak at them, as I don't want you to go through every one right now--but whether these are the slips which are reflected in Exhibit "44", or "E" in evidence? It is the same thing. (Handed to the witness)

A. Okay. A spot check shows all the credits in here are in here. (indicating) I haven't gone through the entire list.

MR. ANOLIK. Okay. Your Honor, we have shown this to the Government previously.

THE COURT. Any objection to "G"?

MR. COOK. With regard to Defendants' "G", your Honor, we would stipulate their admissibility. They are records kept in the ordinary course of business; the Falcone Dairy Products, Inc. kept these records in the ordinary course of business. We stipulate to their admissibility. We do not want, in conjunction with the stipulation, to stipulate with regard as to how much knowledge Mr. Accardi has.

MR. ANOLIK. I am not asking you to.

THE COURT. "G" is admitted.

(Defendants' Exhibit "G" was received in evidence.)

Q (By Mr. Anolik) Also, you were asked the question about accumulated depreciation, do you remember, which amounted to about seventy or seventy-one thousand dollars, or so?

A. Right.

Q When you say "accumulated depreciation," that means depreciation taken over the years?

A. Right.

Q That was not $71,000 taken in one year, was it?

A. No, from the inception; from the purchase of the assets--the equipment, the building, whatever it was. It may have been ten years, twenty years, thirty years since the inception.

Q A little bit was taken each year?

A. Right.

Q And, that was merely a reflection of how much had been taken over the years?

A. Right.

Q This was not a lump sum taken in one year?

A. Right.

Q Now, how long have you been an accountant, by the way?

A. Thirty-five years; thirty-eight years.

Q Mr. Accardi, it was your testimony that ordinarily, perhaps, the two hundred ten thousand some odd dollars should have been taken in 1971?

A. It should have been taken at the time it happened.

Q Was there anything improper about taking it in 1974 if it was a legitimate credit?

A. There was nothing improper in view of the fact it was a related company and they had losses. They probably felt it served no purpose to give Alburg a credit at that time. I don't know what their thinking was, but they probably didn't appreciate the accounting aspects that a credit should be taken when it occurs.

Q What I mean is, from the books and records, the credit they did take, they were entitled to take?

A. Absolutely.

Q They were not inventing this as a credit?

A. No.

Q They showed you substantiations for it, did they not?

A. They had credit given to them.

Q And, they indicated they had gotten advice of counsel about it, isn't that true?

A. That is correct.

MR. ANOLIK. No further questions, your Honor.

THE COURT. Counsel approach the bench, without the reporter.

(Discussion at the bench off the record)

THE COURT. Ladies and gentlemen. We are going to take our noon recess and our afternoon recess, and evening recess all at the same time. As I advised you,

before the weekend, we have other matters scheduled for this afternoon. We'll resume in the morning at 9:30, and I will ask you from now, until 9:30, not to discuss the case with anybody, or listen to anything about it, or read anything about it. See you in the morning at 9:30. We'll stand in recess.

(Court recessed at 12:00 p.m.)

(February 10, 1976; 9:30 a.m. in the courtroom without the jury)

THE COURT. Mr. Anolik, anything you would like to say for the record?

MR. ANOLIK. Yes. I am a little bit concerned over the fact, yesterday, a witness who used to work for Falcone Dairy, by the name of Irene Fried, at the taxpayers' expense, was brought to Vermont. We had spoken to her, and it appeared to us that she had some information which would be somewhat helpful to the defense. I am sure that the Government elicited the same facts from her. The Government elected not to use her, after having brought her up here. We think this is not consistent with the spirit of Brady versus Maryland, 373 U.S. 83. We are not talking about the letter of the case, but the spirit of the case.

THE COURT. In what respect?

MR. ANOLIK. In the respect, matters helpful or exculpatory to the accused should not be kept from the

jury. Now my clients will have to, if they want to use her, bring her back at their own expense to use her. We can't put her on, obviously, during the Government's case. So I just mentioned that, your Honor, as an aspect which disturbs us a little bit.

Additionally, your Honor, we were here at five to 9:00; at 27 minutes after 9:00, I got about thirty-five pages of thirty-five hundred material, and I would like to know how I can possibly read this to interrogate a witness in time.

THE COURT. Let's hear from the Government.

MR. O'NEILL. With respect to the witness, Irene Fried, we brought her up here on the basis that her testimony would be useful. Yesterday, at noontime, I spoke with her and ascertained she would testify, if given the opportunity, to Falcone's getting all kinds of bad cheese, and things like that. I ascertained it was completely hearsay. There is nothing in her testimony that could be used. I said to Mr. Murdoch, "We have a witness we are going to release. We got her up here and we will have to release her. If you want her, give her a subpoena." Mr. Murdoch had an opportunity to speak with her. To say we are violating the spirit of Brady is in the opposite direction. We made that witness available to speak with them and ascertain the matter and go over things. For them to say we are not acting in the spirit of Brady is ludicrous.

With respect to the thirty-five hundred material, I think the first day we were in here I indicated we would have thirty-five hundred material ready upstairs to be picked up. We have been delivering it in recent times because nobody came by to pick it up.

THE COURT. Was the thirty-five hundred material available this morning?

MR. O'NEILL. It would have been ready, your Honor, not too long after nine o'clock. Frankly, most of the material turned over this morning I don't think is even thirty-five hundred material. What it is, is various reviews of records by Agent Axten which we'll not testify to, but rather than take the chance something may be inclusive, or the Court might rule upon, we simply included this all in there.

MR. ANOLIK. In connection with the Fried problem, Mr. O'Neill indicated he was not going to examine her, and we examined her thirty-five hundred and I talked with Mrs. Fried. Mrs. Fried indicated she had direct personal knowledge of the fact in 1971 there was, in fact, bad cheese, and bad cheese at Falcone Dairy Products in Brooklyn. It is not a hearsay problem, ar far as she is concerned. Mrs. Fried indicated that she understood she would be called by subpoena, and have to come back here, she is greatly inconvenienced in that she only had a day's change of clothes and had to go back to New York City and not prepared to stay until Wednesday or Thursday.

THE COURT. Certainly, counsel for both sides preparation of a matter for trial, and trial of the matter, has to be within the wide discretion of counsel. There are many reasons why witnesses may be called and then released, especially if their testimony is going to add nothing to the substance of the trial.

I think my experience, Mr. Anolik, has been the Government, the United States Attorney's Office, in this state, acts in good faith. I haven't known of any time when they have not. If Mrs. Fried has material you wish to introduce, it is unfortunate she is going to have to make two trips to Burlington, but if she has testimony of substance, or evidence of substance, and you want to put her on in connection with the defendants' case, obviously, you will do so. I find it difficult to fault the United States for not putting a witness on if, in their judgment, they feel they should not put the witness on.

MR. ANOLIK. Your Honor, I am not trying to fault them in the sense of strategy. If this were a situation where we were trying the case in the witness's own home town, there would be no problem, but this is a situation where we are trying a case a number of miles from where the witness lives. They could have put her on for even one minute, which would give us the chance to adopt her as our own witness on cross examination and bring out certain facts helpful to us.

Now your Honor threw in a gratuitous remark you have not discerned any acts of bad faith. I do not know this United States Attorney's Office. This is my first case with them, and I have no personal knowledge, other than what I have gained in this case. However, Mr. Wool advises me he will never again have a conference with the United States Attorney's Office in view of the fact he had a distinct understanding that nothing his clients said would be used against them in his conferences, and he said he was shocked when he found out they intended to offer as statements against Mr. Falcone matters which he articulated loud enough for an agent to hear during his conference. Mr. Wool has advised me I have his right and his authority to tell this Court he considers this an act of bad faith, and I wish to put this on the record.

THE COURT. You may put it on the record, and it is unfortunate that counsel have come to this situation, but certainly, whether or not Mrs. Fried will be called, I think is within the discretion of the United States Attorney's Office.

As far as the thirty-five hundred material is concerned, who delivers it to who, or where it comes from, I think that is a matter of little moment. Now, Mr. Anolik, if you didn't receive it at nine o'clock and expected it to be delivered to you, the United States Attorney's Office is on the floor above, and in two minutes you could be up there and

pick it up, if it was available.

MR. ANOLIK. All I know, your Honor, is Mr. Murdoch had indicated to me, and he will correct me if I am wrong, in the past when it was ready, a young lady came down and gave it to us.

THE COURT. Fine, but if it doesn't show up in that form, it doesn't take any great imagination or initiative to get it.

MR. ANOLIK. Except, we don't know if they have any, your Honor.

THE COURT. Then go up and ask them. We cooperate in this jurisdiction, Mr. Anolik.

MR. ANOLIK. I agree, except we don't know it. That is the point.

THE COURT. I appreciate that fact, but one minute of your time to find out if there was thirty-five hundred material and for whatever reason it had not been delivered---

MR. COOK. Mr. Anolik has lived in our office for the last two days. He was up there all yesterday afternoon.

MR. ANOLIK. I was up there twenty minutes. Mr. Murdoch was up there, not me.

THE COURT. How the thirty-five hundred material is delivered between counsel is not a matter the Court is going to concern itself with. The Court expects that the

thirty-five hundred material will be delivered some time in the morning on the day in which it is going to be used and that Mr. Anolik is going to have an opportunity to read it, so that we don't have to suspend once we get into the trial, and I suggest counsel discuss it with one another and work out a system, if you haven't worked out one by now of getting it from one to the other.

MR. O'NEILL. We wish to bring to the Court's attention when the Government objected to the presence of the tape, plus the copies of the sales entries, and, if I recall, the Court wasn't overwhelmed with the idea because we haven't previously seen it because it was in our own books, the problem is I would like to illustrate to point up we checked those tapes last night, and the tapes don't total the red entries in this book; the circled entries don't necessarily reflect the entries in the book. Some of them have, but there may be errors. This was the cause of our problem. Luckily, we had enough time last night to sort it out.

We have been handed, this morning, some Alburg Creamery invoices and documents. We appreciate the fact, your Honor, as the case goes along everyone develops information. Some things are not in the control of various people. From what I understand, these have been in the files of Falcone Dairy, and we were presented with them this morning. I don't know if we will have an opportunity to go over them in cross

examination of the witness. I am not asking the Court for a ruling. We just want to put the Court on notice, if a problem arises.

THE COURT. Is this a witness you are going to call?

MR. O'NEILL. No. We asked for documents pursuant to 1681(a) of the Federal Rules of Criminal Procedure. First, we started with the list and didn't get that, and something resembling it floated in yesterday. Now, we have these things, and the nature of the problem is I really haven't had a chance to look at them but briefly this morning. There may not be a problem, but we want to put the Court on notice, in the event it is.

MR. ANOLIK. If the United States Government had given us all their thirty-five hundred material in advance, we would be able to plot a little bit better what we need, but the point is we had to have this sen p, your Honor, because we were not aware of the fact we needed certain material until we heard the case. So how can we give them mat ial when we don't have to put in a case? However, I intend to, in view of th fact what developed in this trial. I don't see any difficulty. I gave them an invoice I said I might use, but in the spirit of fairness, I turne them over. I am not sure I will use them, but I might.

THE COUTT. You may look at them at some

appropriate time, Mr. O'Neill. It is not a matter of great detail. Anything else, gentlemen, before we bring in the jury? All right, Mr. Marshal, bring in the jury please.

(The Marshal conferred with the Court at the bench.)

THE COURT. Gentlemen, we have a request by Mr. Wool to discuss something with me at the bench. I assume that is proper to do. Do you want counsel present for this, Mr. Wool?

MR. WOOL. I have a matter in Superior Court, a trial, and I stayed here all morning yesterday waiting to be called. I was told I would be called at 9:30.

THE COURT. Mr. Wool, you have been around long enough.

MR. WOOL. I know that, your Honor, but if I could get some indication.

THE COURT. What kind of a matter do you have?

MR. WOOL. A contested custody matter that will take almost all day today. If I could have an idea of when I am to be called, I will call Judge Hill and explain it.

THE COURT. When will you call Mr. Wool?

MR. O'NEILL. We'll call Mr. Wool as soon as we finish with Mr. Accardi.

THE COURT. I don't think that will be too long, Mr. Wool. Call Judge Hill and tell him your problem; I

am sure he will be sympathetic.

MR. WOOL. Thank you.

(Mr. Wool left the courtroom and the jury entered at 9:45 a.m.)

THE COURT. Good morning, ladies and gentlemen.

JURY. Good morning.

THE COURT. All right, Mr. Cook.

MR. COOK. Mr. Accardi.

(MARIO ACCARDI entered the courtroom and resumed the stand.)

REDIRECT EXAMINATION

Q (By Mr. Cook) Mr. Accardi, for the record, you were on the witness stand yesterday noon when we adjourned?

A. That is correct.

Q You realize you are still under oath?

A. Right.

Q During the cross examination by Mr. Anolik, you made some mention of the fact that you did not see. completely, I think it was, the Sales Book of Falcone Dairy, which I believe was Government's "44," and the General Ledger of Alburg, Government's "43". Do you recall telling Mr. Anolik that?

A. That I did not see the complete ledger at the time in the grand jury, that is correct.

Q You didn't mean to imply you were cut off in any way?

A. No, no. I saw several pages, without going back.

Q Now Mr. Anolik also asked you about--I think he did--there was some discussion, at least, with regard to the fact that when you made the entry on January 31st with regard to the $210,000, that you did so on the basis of a conversation with Mr. Falcone and Mr. Curreri, and also on the basis of a list that they had retained, is that right?

A. That is correct. They had the list and they told me that it was---

Q I asked you, did you do it on the basis of the list?

A. Right.

Q Did they tell you they had a list?

A. They had a list, and I saw some tapes.

Q But, you did not review either the list or the tapes?

A. No, I did not review them.

Q And, I think the exhibit which was admitted provisionally yesterday, Defendants' "F" and Defendants" "E", you will recall you saw Defendants' "F" and Defendants' "E" yesterday?

A. Yes.

Q You aren't prepared to say you ever saw them before, are you?

A. No, just the tapes, the adding, but I did not see this.

Q You aren't prepared to say there is anything on Defendants' "F" or "E", which are the tapes, you saw previously?

A. No. The tape, without that Xerox copy, sir---

Q I don't want to get your testimony wrong.

A. Okay, sir.

Q You aren't prepared to say you ever saw Defendants' "F" before yesterday?

A. You are correct.

MR. ANOLIK. That is Defendants' "F"?

MR. COOK. Yes.

Q (By Mr. Cook) Now, are you aware of the fact that Falcone bought from other suppliers of cheese, than Alburg, in 1971?

A. Yes, sir.

Q Do you know anything about the Milton Cooperative account?

A. Yes, they purchased from Milton Coop.

Q That would be a substantial amount of cheese?

A. It would be.

Q In fact, you probably know, was that more cheese than from Alburg during 1971?

A. It is hard to say. Alburg produced more whole milk cheese and Milton probably produced what is known as part skim and part whole milk. As far as the quantity is concerned, I couldn't say to which plant they shipped more.

Q Would you say Milton was a big supplier of cheese to Falcone?

A. Oh, yes, it was a big supplier.

Q Now I believe you mentioned in your grand jury testimony,

and you mentioned also in your testimony yesterday, that Mr. Falcone and Mr. Curreri had told you that this $212,000 list which they said was bad cheese, was due to polluted water?

A. Right.

Q That this matter of this $212,000 credit had been taken up with their attorney, and that it was as a result of conversations with their attorney that they indicated to you that you should put this credit in the books, is that about right?

A. That is correct.

Q Now I take it that you, yourself, were not present when Mr. Curreri and Mr. Falcone had conversations with their attorney?

A. I was not present.

Q And, you understood that attorney to be Mr. Joseph Wool?

A. Yes, their bankruptcy attorney. I did not know the name at the time, but now I do.

Q But any conversations which occurred between Mr. Wool and either Mr. Falcone or Mr. Curreri regarding any credit of $212,000, you, at no time, were present during those conversations?

A. I was not present.

Q Now I think you testified yesterday--you tell me if I am wrong, it has been twenty-four hours--that there was a period of time in, I believe, 1974 when Falcone Dairy's indebtedness went from $300,000 to $500,000. Did you testify

something to that effect?

A. The indebtedness went from three to five? I don't recall, sir.

Q Did you testify their indebtedness increased during the period 1974?

A. Their indebtedness to whom, sir?

Q Well, the general indebtedness of Falcone Dairy.

A. Well, their indebtedness did increase through the years, because of losses.

Q Now, in other words, it will be your testimony they had a bad financial picture?

A. They had a bad financial picture.

Q Do you know whether or not they ever went into bankruptcy?

A. No, not officially, but, in effect, business was discontinued in January of 1974. They had no funds to operate; they couldn't buy cheese; they had no credit, and they couldn't pay the bank.

Q Falcone Dairy never filed for bankruptcy?

A. No, not legally.

Q Now I guess one last subject matter. You testified at length yesterday how, after discussions, I believe you said, with Mr. Joseph Falcone and others with regard to an important expective loan around December of 1972, or January of 1973, you made an entry in January of 1973 increasing the assets, or the appreciation of the assets of the corpora-

tion by around $300,000?

A. That is correct, sir.

Q And, you stated that you thought it was a justifiable increase?

A. Yes.

Q But it is a fact, is it not, that you took that off the books some three months later?

A. I took it off in view of the fact that the loan was not consummated.

Q So you left it on the books for three months without the appreciation of $300,000?

A. That is correct, sir.

Q And, as I understand your testimony, you were, during this period of say July 1971 through up until about maybe May of 1974, you were at Falcone Dairy Products at least once a month, and some times more than that?

A. That is correct, sir. You have to remember there were several companies in that same office.

Q And, it is my understanding that during the period, we'll say, from July of 1971---

MR. ANOLIK. I object to what the Government's understanding is. May the question be posed to the witness?

MR. COOK. I will reframe the question.

THE COURT. All right.

Q (By Mr. Cook) From July, 1971 until January, 1974 had Mr.

Joseph Falcone ever told you that he was withholding credit with regard to Alburg Dairy?

A. No, sir.

Q You said it was a complete surprise to you?

A. On the credit, that particular credit, yes. I did not know until either January or February; thereabouts.

Q Of 1974?

A. Correct.

Q Never discussed during the preceding 2-1/2 year period that those credits existed?

A. That is correct.

Q Did you ever describe the $300,000 entry as "eye wash"?

A. No, not "eye wash," a "wash," in that it was entered and then cancelled out. That is what I mean by "wash". I don't know where the "eye" came in.

Q And, it is my understanding, as best as you can recall now, that you would have had the conversation with Mr. Falcone or Mr. Curreri, I think it was your testimony yesterday, with regard to the $212,000 entry in either January or February of 1974?

A. Yes.

MR. COOK. May I have just a moment, your Honor?

THE COURT. Yes.

MR. COOK. You may inquire.

RECROSS EXAMINATION

Q (By Mr. Anolik) Mr. Accardi, will you just describe again to the jury what a "wash sale" or "wash transaction" really is?

A. A "wash" is a slang expression used for doing something and then undoing it.

Q Is it an accountant's phrase?

A. That is right, the effect is nil. The effect is nil.

Q Like a new transaction cancels out the transaction?

A. That is right.

Q That is done all the time in accounting practices, isn't it?

A. Yes.

Q Where one transaction cancels out another?

A. Right. Some times you have contra items, several accounts. The paper work washes out the other--I.O.U., you owe me. It is the same amount, and it is washed out.

Q That is an expression accountants use all the time?

A. Yes. I use that expression.

Q Mr. Cook asked you whether or not Mr. Joseph Falcone ever told you about the credits. The credits were right in the books, weren't they?

A. Yes.

Q All these credits were recorded regularly in the books, isn't that true?

A. Right. What I am referring to is the credit taken

against Alburg.

Q In other words, the reason you weren't told, it wasn't taken until January of 1974?

A. That is right, of which I was not aware of.

Q But the taking of the credits during 1971 were right in the books, weren't they?

A. That is correct.

Q That wasn't kept from you?

A. No.

Q In fact, you entered them in the General Ledger?

A. The advice to me was the credit was to be taken against Alburg.

Q In other words, what you were testifying to yesterday is that ordinarily it should have been taken in 1971?

A. Two years back.

Q So they took it in 1973?

A. Yes.

Q But there is no doubt the credits were there?

A. Absolutely.

Q Now let me ask you this, Mr. Accardi. When you say the $300,000 loan, or whatever it was---

A. Appreciation.

Q Was taken off the books, this was not something that was improper, was it?

A. No.

Q Will you explain to the jury how that works?

A. According to management, in trying to obtain a loan, they tried to show the correct picture of the value of Alburg, and in many cases the market value of a plant could exceed the book value of the plant on the books. In order to bring the value up to as close to market value as possible, you make an entry to raise the value of the plant, the building, machinery, whatever, and offset it by a credit known as an "appreciation in value not realized" because the only time you realize something is when you sell it.

Q It is a paper entry?

A. It is a paper entry giving effect to the market value of the asset, because the book value on the books was not the proper value in the sense that the plant and machinery was worth more than the books show.

Q In other words, Mr. Accardi, if, for example, you bought a house in 1950 for $20,000, it might now be worth $45,000 but it is on paper until you sell it? You don't have the $45,000, isn't that true?

A. Right. Very often, when you make a loan they ask for your assets, what you own, and your residence. Many people put down the home rate. The market value of their residence, instead of being $25,000, it might be $50,000.

Q But they don't have the fifty in their pocket?

A. That is true.

Q When the loan they were seeking to obtain did not go through, there was no reason to list the market value?

A. That is true.

Q That is the reason it was cancelled out?

A. The reason it was put on the books was upon the advice of their attorney who tried to negotiate a loan.

Q Who was that?

A. I believe it was Jack Arnold. He insisted it would be better to put it on the books so anybody looking at the books would see it was on the books.

Q Nothing was withheld?

A. Nothing was withheld. As a matter of fact, the entry shows this is a temporary entry; that it would be finalized and put on the books officially at such time as the loan went through, and if all the legal paper work was done; the legal transfers.

So there was full disclosure?

A. Full disclosure, absolutely.

Q Now let me ask you this, Mr. Accardi--by the way, where do you live?

A. In Brooklyn, New York.

Q You don't live in Vermont?

A. No, sir.

Q You came up here by airplane, is that correct?

A. That is correct.

Q Now, Mr. Accardi, let me ask you this. Let us assume that, for example, a customer of Falcone Dairy seeks to purchase, let's say, $50,000 worth of cheese, okay, and they obtain a $10,000 sampling of that and find it no good; they, therefore, reject the entire batch. Would you explain to the Court, as an accountant of quite some experience, how the books of Falcone might reflect that transaction, and how the prospective customer might reflect that? Would you just explain that?

A. As far as Falcone, their general policy would be to bill the customer for the $50,000, in this case, and if the customer only took $10,000 of that and rejected forty, according to the practice of the bookkeepers on a particular order, it is very possible they would charge the customer $50,000, then cancel out the whole $50,000.

Q A credit?

A. Make that a wash--again, for paper work--and they will show back as a charge, $10,000. So, in effect, the sale was $10,000.

Q What would the customer's book show?

A. I don't know what they would do. It is a matter of good practice if a bill is approved, and the cheese is approved, the customer would enter the whole $50,000.

Q What if they had not approved it?

A. It is whatever their practice is. They may hold that bill out and never enter it.

Q In other words, they might only enter the $10,000 actually purchased?

A. Yes, because the cheese was good to the extent of $10,000 worth.

Q Isn't it quite possible, Mr. Accardi, there would be a greater credit for that customer on the books of Falcone than there would be in the books of the customer?

A. Absolutely. It depends on what their bookkeeping procedure is. One thing is that the result comes out right. If it is fifty minus forty, equals ten, ten is the figure. If it is fifty minus fifty, plus ten, ten is the figure. It is the result that counts.

Q So it is quite possible the books themselves might not jive? The customer might owe only ten?

A. Right. The bookkeeping procedure might be different. The customer may enter the whole fifty thousand and receive credit for forty, and he has ten owing, and he pays the ten. Some people will not enter the fifty thousand until such time that the bill is approved for payment. They say, "Why should I put this bill on the books? I am not going to pay it, it may not be good, or it may not be the item I want," and so on.

Q So there could be various ways of entering these things?

A. The important thing is, when you get down to the basis of what is the net result of the transaction, that is what counts.

Q Now, Mr. Accardi, Mr. Cook asked you whether or not you had conversations with Mr. Joseph Falcone about credits in general. Was Mr. Joseph Falcone really anybody you would discuss the books with?

A. Not generally, unless it was an important management function.

Q But he didn't personally keep the books, did he?

A. Oh, no.

Q The girls in the office kept the books?

A. That is true.

Q How long have you known Mr. Falcone, by the way?

A. Twenty-five or thirty years.

Q He has never been a bookkeeper, as far as you know?

A. Oh, no.

Q He is a cheese maker, isn't that true?

A. That is right.

MR. ANOLIK. No further questions.

REDIRECT EXAMINATION

Q (By Mr. Cook) You say this "wash," is a usual thing, a usual transaction in accounting?

A. It is a cancellation, yes.

Q But it assumes that things are properly cancellable, does

it not?

A. Of course.

Q Well, can you tell me, isn't there an inconsistency when you state on official records of Falcone Dairy Products that their assets have increased $300,000?

A. Right.

Q And then three months later, you make an entry indicating that $300,000 is lost somewhere, no longer existing?

A. Yes.

Q Isn't that an inconsistency, except unless there was a fire, or unless you had damage to your property, or unless you have lost assets?

A. No, sir. There is full disclosure in this respect when the assets are increased, because the appreciated value is shown as an increase in assets. You are correct in that respect. On the other side of the fence, you have an increase in capital or surplus, and it balances out. You have an increase which represents a surplus not through the ordinary way of increasing surplus, or which represents surplus, represents accumulated profits after federal income taxes. Now we have another situation here where a capital or surplus rose in view of the fact the taxes increased $300,000. Therefore, we have an offseting figure of $300,000, on those unrealized appreciation in value of assets, which you will find in any accounting textbook.

Now when this was canceled, the unrealized appreciation was wiped off, and the increase in the value of the assets was wiped off, so the slang used is to use the word "wash" or canceled.

Q On the basis of this accumulated appreciation of $300,000, did you prepare any financial statement for any prospective loans which reflected this?

A. That is correct, sir, with full one hundred per cent, and I use the words "100 per cent disclosure".

Q Where are those applications now, do you know?

A. I don't know, sir.

Q Who were they given to?

A. I assume, the loan broker; the attorney or whoever negotiated for the loan.

Q Well, you say you prepared them?

A. I prepared the financial statements.

Q Who did you deliver them to?

A. I left them at the office for delivery to the loan negotiator. Whether it was the attorney, I don't know.

Q You delivered them to Falcone Dairy Products?

A. That is right. Whether they mailed it to him or not, I don't know what went on. I did my job; I prepared an unaudited, fully disclosed, qualified, and 100 per cent qualified with no strings attached; complete disclosure.

Q You mentioned something that this was an unaudited statement?

A. Right. May I please read it to the Court?

Q Before you do that, tell me what is an unaudited statement?

A. "Unaudited" means I did not verify the cents, the figures, primarily in corresponding with creditors or customers, like confirming a bank balance. When the bank wants you to confirm a bank balance, they send you a statement, "kindly confirm the balance," and you will say whether or not it is okay, and what is the difference. "unaudited" means it is taken from the books and accounts as they are presented without you going and doing any investigation as to the accuracy of accounts receivable, accuracy of accounts payable, accuracy of notes payable, accuracy of inventory. Because it is submitted unaudited, in a general sense, means you did not do any real investigation outside of taking it from the books and records as they appear, and taking those figures and putting it in the proper category, whether assets, liabilities, or capital income or expenses taken from the books as prepared by the staff. May I read to you this particular statement. (Reading) "Unaudited financial statements with notes attached, December 31, 1972," addressed to the "Board of Directors and Stockholders, Falcone Dairy Products. I submit herewith the balance sheet of Falcone Dairy Products, Inc. as of December 31, 1972, and the related statement of loss and retained earnings for seven months then ended. These state-

ments were not audited by me, and, accordingly, I do not express an opinion on them. The aforementioned financial statements are restricted to internal use by the client and, therefore, do not necessarily include all disclosures that might be required for a fair presentation." Now here comes the notes to the financial statement, which is part of the financial statement. (Reading) "Income and expenses were taken from books and records of Falcone Dairy Products, Inc. Alburg Creamery, Inc. is 100 per cent owned by Falcone Dairy Products, Inc. The value of Alburg Creamery, Inc. was determined by the officers to have a market value of $360,000. The original net book value of Alburg Creamery was increased $301,000, which represents an unrealized appreciation in the value of the investment. The land owned by the three stockholders of 365 acres in Vermont was valued at $1,000 per acre for a total of $365,000. The land title is in process of transfer to Falcone Dairy Products, Inc. The land transfer is subject to legal consummation." Okay, here is something else. (Reading) "Investment of $290,000 in C.O.F. Realty, Inc. which is currently owned 40 per cent by the stockholders, the Falcone Brothers, was derived as follows by the officers: Market value of realty, $1,125,000; 40 per cent interest represents $450,000; mortgage on real estate, $400,000; their share, or 40 per cent, $160,000. Net interest of stockholders,

290,000." In other words, the Falcone Brothers had an interest, market value interest, in this particular real estate property to the extent of $290,000. Now the net interest was transferred to Falcone Dairy Products, Inc. This is what you see on the books. "This was subject to consummation of legal transfer which is in process, per attorney." He is the fellow that is presenting this application, whatever application he made out to the bank, or other loan people. (Reading) "Officers loans of $76,000 was donated to the corporation subject to inclusion in corporate minutes." The officers had the loan on the books of Falcone Dairy Products; $76,000 in loans, and the boys were willing to donate this to the corporation, provided they put it in the minutes, did it legally, and so on. Now the capital stock common, therefore, the capital value of the Falcone Dairy, was increased $655,000, because of the $365,000 land value and because of the $290,000 value in this particular real estate company they owned, subject to consummation of legal transfer. I don't know if anybody could qualify this any more. (Reading) "The Bankers Trust loan of $450,000 is secured by receivables, inventories, and personal stockholders' signatures," which shows that they had gone through a lot of trouble trying to get money to survive, and mortgaging every particular thing they owned.

Q If I could interrupt. It is not responsive to the question,

but I take it the financial statement is what you have been reading from?

A. That is right, sir.

MR. COOK. I would like to have it marked, if I may.

MR. ANOLIK. No objection.

MR. ACCARDI. This is my own copy. I would like to keep this.

MR. COOK. We can make a copy for you.

MR. ACCARDI. Very good.

CHIEF DEPUTY CLERK LAFAYETTE. Government's Exhibit "74" for identification, Unaudited Statement, December 31, 1972.

Q (By Mr. Cook) I want to ask you once again, Mr. Accardi, this $300,000 entry you entered it, first of all, in the Alburg ledger?

A. Falcone ledger, sir.

Q I am sorry, Falcone ledger. On what date?

A. December 31, 1972.

Q And, again you have testified that the appreciated increased by $301,000?

A. That is correct, sir.

Q That is on Page 2 of that ledger?

A. Right.

Q Now you testified yesterday that you took it off on Page 5?

A. Right.

Q Is that right?

A. Correct.

Q And, that means that you washed it out?

A. Canceled it out because the loan did not go through, and this was canceled out as of May 31, 1973.

Q Which was three months later?

A. The reason it was closed out then---

Q Answer my question.

A. Yes, it was closed out.

Q Three months later?

A. Five months later.

Q And, are these the only two entries in Government's "43" which is what I have been referring to, which reflects that $301,000 entry?

A. Yes. As far as Alburg is concerned, you are correct, sir. The $301,000 pertains to Alburg, yes, and the other items pertain to their other personal entries. Those are the two entries; you are correct.

Q So it is fair to say, is it not, you are putting the appreciation account right back where it was five months before?

A. I canceled out; yes, sir.

Q So, isn't it fair also to say that it didn't lose any appreciation during that period?

A. No, we didn't lose anything.

Q So is it fair to say that when you took it off, you really took something off that didn't accurately reflect the appreciation?

MR. ANOLIK. I object, your Honor. That is argumentative.

A. When we took it off, we went to the book value which was on the books all the time.

Q (By Mr. Cook) I want you to answer my question.

A. Go ahead, sir.

Q You increased the appreciation?

A. Right.

Q And, I think you said nothing happened to change it?

A. No.

Q During the five month period?

A. Of course, if the market value was $360,000 in December, the market value should be around the same thing after five months; that is, as far as the market value is concerned.

Q What you just said, the appreciation, after you increased it to make it accurate, remained constant, or about constant?

A. Yes, subject to market conditions in five months. It could not change drastically.

Q But, you turned right around and on the books of the corporation, you made a deduction of $300,000 which did not accurately show that appreciation as it existed at the time

you made the deduction. Now isn't that true?

A. I canceled out when the entry was made originally. I said it is on the books subject to consummation of the loan, and what I did, was increase the value of the assets, increase the unappreciated value of the building. So, I put a plus ten here and I put the plus ten here, and it balances out, and I said that if the loan went through, this appreciated value would remain on the books. If the loan was not--I didn't know what was going to happen in five years, five months, hence, I said if the loan did not come through, I would wash it out, cancel it out, take out the ten dollars here and take out the ten dollars.

Q Whether or not you agree with me, after you made that deduction five months later, you did not accurately reflect on the books of the corporation what the appreciation was?

A. According to the officers, that building and plant, and the machinery, because of inflated values, was worth $360,000. They know more than I do. They have been involved in the plant and they know what the plant is worth. They have seen what kind of plants were for sale and how much money they ask for them. It was their honest opinion the value was $360,000, and I said that upon figures submitted by the officers, and I put that down there. I said that this is going to be here only temporarily. This business started two years later. You have full disclosure

there, Mr. Cook; this entry will stay on the books if the entry is consummated and to stay on the books, I wanted to make darned sure that the attorney-transfers all these assets, legal title, put it in the minutes, and so on.

Q I want to ask you, once again, on May 31, 1973 did the entry which you made correctly reflect the appreciation of the assets of the corporation?

A. It correctly reflects the book value prior to the time I made the entry.

Q Did it, at that time, correctly reflect the appreciation of the assets of the corporation, that entry? Can you answer that "Yes" or "No"?

A. I would say that the value of the plant and machinery---

Q Can you answer that "Yes" or "No"?

A. No. You would have to get that appraised properly, sir.

MR. COOK. May I have just a moment, your Honor. That completes our redirect examination, your Honor, but we would offer this in conjunction with the witness's testimony.

THE COURT. They have already agreed to it, so it is admitted.

(Government's Exhibit "74" was received in evidence.)

RECROSS EXAMINATION

Q (By Mr. ~~Accardi~~ Inglis) Mr. Accardi, just to clarify in the jury's

mind and the confusion that appears to be in the Government's mind, would you tell me before the entry in December appreciating the value of the real estate by some three hundred odd thousand dollars, what was the value listed at? Wasn't it book value?

A. Yes, sir, which is a regular accounting procedure.

Q Assets ordinarily are listed at book value, isn't that true?

A. That is right.

Q You don't list assets at market value?

A. No, sir.

Q You would be changing them every year, isn't that true?

A. That is right.

Q So you list them at book value?

A. Right, and if you have owned stock in the last two years prior to the upsurge, you will have to change it six times a day.

Q That is right. So for the purpose of obtaining a loan, the officers were willing to merge their own personal fortunes, not corporate items, their own personal property, isn't that true?

A. Correct.

Q And, therefore, for the purpose of obtaining a loan only, you put in temporarily, we are going to list this asset not at book value, but market value, isn't that true?

A. Correct.

Q Then when the loan didn't go through, you returned it to book value, isn't that so?

A. Correct.

Q There was no cheating, was there?

A. No, and that was done in December. We said if the loan went through, we would put it on the books legally and so on, and the transfers and so on, but if the loan did not come through, we would cancel it out.

Q You returned it to book value?

A. Yes, right.

Q Now, Mr. Accardi, isn't that in accordance with proper accounting procedures?

A. Yes, sir.

Q There was no trickery there?

A. No, sir. The full disclosure, unrealized appreciation, and every book in the country will tell you that there is such an account where you raise the value of the assets and you raise the value, you appreciate the value. Why do you use the word "unrealized," because you never realize anything until you sell it, so at that point it is unrealized.

Q Now when it is returned to book value in May, anybody who has accounting experience knows that it is back at book value, isn't that true?

A. Correct.

Q And, they realize the market value is almost always differ-

ent than the book value, isn't that true?

A. Very true.

Q Consequently, nobody was deceived and nobody was defrauded, isn't that true?

A. Right, especially since you had 110 per cent disclosure.

Q You say 110 per cent, because it was more than 100 per cent disclosure?

A. Right.

Q This statement now marked Government's Exhibit "74" which is now in evidence, reflects you decided to disclose everything, isn't that true?

A. Absolutely.

Q And, it was disclosed?

A. Right.

Q And, Mr. Falcone asked you to give a complete disclosure, didn't he?

A. Absolutely.

Q Did he ever tell you to withhold any information?

A. Not at all. In fact, Mr. Falcone and I wanted to show that particular result on a wash sheet. I said, "Why put it on the books if the loan doesn't go through, cancel it out," and as Mr. Cook said, the attorney won out in the sense he would like to see it on the books. This way, any one examining the books would see it in this little particular book. He would go through the books and see the

values.

Q When he saw the value, he knew it was market value because it was disclosed?

A. Of course.

Q So the person you were seeking the loan from was not being deceived either?

A. Right. I don't know what happened after that. I did my work. What happened with the attorney, with the loan broker, I don't know. I did not fill out the loan application. I submitted what I was supposed to submit, and there it is (indicating) and my work stopped at that point.

Q Were you ever asked to do anything improper by Mr. Falcone?

A. Never; never.

MR. ANOLIK. No further questions, your Honor.

THE COURT. Mr. Cook, any questions?

MR. COOK. No further inquiry.

THE COURT. All right, Mr. Accardi, you may step down.

(Mr. Accardi left the courtroom and Attorney Joseph S. Wool entered.)

JOSEPH S. WOOL, Sworn

DIRECT EXAMINATION

Q (By Mr. O'Neill) May we have your name, sir?

A. Joseph S. Wool.

Q You are a lawyer here in Burlington?

A. I am.

Q Mr. Wool, has there come a point in time in your work as an attorney where you represented Alburg Creamery, Inc. with respect to the bankruptcy proceedings?

A. Involuntary bankruptcy.

Q The answer to the question is "Yes"?

A. Yes, I have.

Q I show you what is marked Government's Exhibit Number "60". Have you seen that document before? (Handed to the witness)

A. I have.

Q Mr. Wool, these pages aren't numbered. We'll have to file through them and perhaps number them. Could you let me go through them, please?

A. Certainly.

MR. ANOLIK. May we have the exhibit number, your Honor?

THE COURT. Sixty.

Q (By Mr. O'Neill) Showing you the first page of Government's "60," where there are two spots where there appears to be the signature of Joseph S. Wool, I take it those are your signatures?

A. They are.

Q Down at the bottom of the page where is says underneath your name, "Notary Public," was this sworn to in your presence?

A. It was without raising his hand, but it was sworn to.

Q In other words, Mr. Joseph Falcone swore to this statement and you notarized it?

A. That is correct.

Q Now, Mr. Wool, thumbing through here to a page which is entitled on it "Oath to Schedule A." I show you an oath signed by Joseph Falcone, is that correct? (indicating)

A. That is correct, and notarized by me.

Q Once again, Mr. Falcone swore to this oath in your presence?

A. That is true.

Q Mr. Wool, directing your attention here to page entitled, "Oath to Schedule B," we have an oath at the top. Once again, did Mr. Joseph Falcone sign this in your presence, and you notarized it as having been sworn to?

A. Yes, sir.

MR. ANOLIK. We have conceded all that, your Honor.

THE COURT. We'll let the Government proceed.

Q (By Mr. O'Neill) Lastly, Mr. Wool, the page entitled "Statement of Affairs Continued," there are two signatures here of Mr. Falcone. He signed those both in your presence?

A. There are three signatures. He signed them in my presence, and I notarized all of them.

Q You notarized them after the oaths?

A. Yes, sir.

Q Now, Mr. Wool, directing your attention to January 31, 1974,

do you recall being in this building for a hearing in the Bankruptcy Court with Mr. Falcone and Mr. Curreri?

A. If there was a hearing on that date, I assume I was here with them.

Q Around that period of time, you were here for bankruptcy proceedings?

A. Yes.

Q Did there come a point in time, following a break in the proceedings, when you had a conversation with Mr. Curreri with respect to bad cheese that Mr. Curreri, or the Falcone Dairy Products, had a few years ago?

A. Yes, I did.

Q Would you indicate to us, basically, what that conversation was?

A. Well, I had many conversations, and I don't know what conversation you are alluding to.

Q Let me rephrase the question, if this will be of some assistance to you.

A. All right.

Q Did Mr. Curreri, at some point in time, indicate to you that Falcone Dairy Products had bad cheese in 1971?

A. Yes, he did.

Q And, did you indicate to him an opinion based on the fact they had bad cheese, they could take credit for that bad cheese on the bankruptcy?

A. I did.

Q I take it, you, yourself, did not in any manner check the bad cheese, or verify it. You were going on his statement, is that right?

A. I have to answer that in a different way rather than just "Yes" or "No," if I may.

Q Let me rephrase the question.

MR. ANOLIK. The witness should be permitted to answer the question.

THE COURT. We'll let counsel rephrase the question.

Q (By Mr. O'Neill) Mr. Wool, did you, yourself, verify any bad cheese in 1971?

A. I was not their attorney in 1971.

Q Would it be fair to state in 1971 you did not have any connection with them, or see any bad cheese at the Falcone Dairy Products?

A. I don't recollect ever seeing any bad cheese.

Q When you gave the opinion, it was based upon the assumption that Mr. Falcone was correctly stating to you what took place?

A. Of course.

Q In other words, what I am suggesting is you were presented with a certain set of facts; you, in good faith, gave him a proper legal opinion?

A. Absolutely.

Q There is no question as to the propriety of your legal opinion as to that date, is there?

A. None whatever.

Q Your legal opinion was postured on the assumption the facts represented to you were correct?

A. That is correct.

MR. O'NEILL. That is all we have, your Honor.

CROSS EXAMINATION

Q (By Mr. Anolik) Mr. Wool, how long have you been practicing law in Burlington?

A. 1938.

Q And, you are a native born Vermonter, are you not?

A. That is correct.

Q Mr. Wool, you represented the gentlemen who are now defendants in the case, or, at least, represented their interest in connection with the Alburg bankruptcy, did you not?

A. It was an involuntary petition in bankruptcy, and I represented them after the fire.

Q Would you explain just very briefly, Mr. Wool, to the jury, what an involuntary petition in bankruptcy is?

A. It is a bankruptcy that has been forced upon you by your creditors who feel by putting you into bankruptcy they may salvage more from whatever assets there are than by allowing you to stay in business and hope you will pay them over a period of time.

Q Can you tell us whether or not the defendants here--Mr. Falcone, in particular--had a conversation with you indicating that he was prepared for a plan to pay off one hundred cents on the dollar?

A. Yes.

MR. O'NEILL. Objection. This is simply self-serving hearsay. There is no exception to hearsay that lets this in.

MR. ANOLIK. Your Honor, I submit this is the very basis of the charges here, your Honor.

MR. O'NEILL. It is still hearsay.

THE COURT. Come to the bench.

(At the bench)

MR. ANOLIK. Again, I have to say I don't understand how this can be self-serving. He is a Government witness; he is being asked about conversations with the clients, and the good faith of the clients is brought into question, but say, of course, you don't know anything other than what they told you, isn't that true? Well, anything that you ask about a defendant, according to the Government, is self-serving. What am I supposed to do, ask things hurtful to them? Of course, I am going to ask things that are helpful but not self-serving. Self-serving can come only from the lips of the person.

THE COURT. I understand the way self-serving

is used, and in the sense, I guess, the Government is using it. In what sense are you using it?

MR. O'NEILL. Here is the basic problem. What Mr. Anolik is doing is going into making Mr. Wool his own witness, going beyond the scope of direct. We are aware of the fact Mr. Wool has a busy schedule and rather than being brought back, if he is put back on the witness stand, he can't simply ask what the defendants told him. What, basically, they are doing is not having the defendants take the witness stand and putting in a defense.

MR. ANOLIK. Your Honor, I will represent now my clients are going on the stand. So the Government will not be deceived of what I am trying to do right now, on the record, your Honor, my clients intend to take the stand.

MR. O'NEILL. If they are going to take the witness stand, why do we get into this purely hearsay?

MR. ANOLIK. Mr. Wool will be in the Virgin Islands this Friday.

MR. O'NEILL. We'll finish long before Friday.

MR. ANOLIK. I don't know if I will, your Honor.

THE COURT. Upon the representation that your clients are going to take the stand, we think it would be preferable if Mr. Wool testifies as part of your case. He is local and he can be made available, and he can be made available

before Friday if we don't get to that point. You call that to my attention, at that point, and if there is an area you want him to cover, we'll make him available so it won't interfere with his trip to the Virgin Islands.

MR. ANOLIK. I understand the rule I am permitted to adopt any witness as my witness, and I am not limited, necessarily, to direct examination, if I want to take it on thus, and I think it is unfair to have these statements that the Government brought out just hanging there, because the insinuations were that the clients were keeping something from Mr. Wool. That was insinuating.

THE COURT. I have some doubts at the present state of the evidence, anyway, this is a particularly relevant area for you to go into. I think it certainly could become relevant later on.

MR. ANOLIK. Well, your Honor, I do want to say this. If, by reason of the progress of the trial, with Mr. Wool's other commitments, health or otherwise, he is unavailable later, we will ask for a mistrial later.

THE COURT. You are a great one to request for mistrials.

MR. ANOLIK. This is only the second time I have done it, your Honor.

THE COURT. We'll take a chance on Mr. Wool's health and Mr. Wool has never failed to meet a vacation commit-

ment yet for reasons of health or otherwise. That is our ruling, and the Government will have to take the chance he may not be available.

(End of discussion at the bench)

CHIEF DEPUTY CLERK LAFAYETTE. Defendants' Exhibit "H" for identification is Letter to Representative of Creditors, dated October 29, 1973.

Q (By Mr. Anolik) I show you Defendants' Exhibit "H" for identification and ask you whether you recall dictating that letter? (Handed to the witness)

A. I do. Alburg Creamery had been incorporated by Judge Foley. He got to the point where he was ready to retire, and he asked me to take over their representation. This fire occurred, and Mr. Falcone came to see me and indicated there had been a fire and wanted to try to make an arrangement whereby he could see that the creditors were paid in full, as a result of my conference---

MR. O'NEILL. Is this reflected in the letter, Mr. Wool?

MR. ANOLIK. Page 2.

MR. WOOL. No, this is the background to it. I am referring to the letter right now.

MR. O'NEILL. We have not seen the letter and don't know what the contents are.

THE COURT. Mr. Wool is not going to describe

the contents. He identified the letter. That is sufficient.

MR. WOOL. Right. This is a letter I dictated and was sent to various attorneys in connection with the fire, and the desire on behalf of Mr. Falcone---

THE COURT. Mr. Wool, you have identified the letter at this time.

MR. ANOLIK. I offer it in evidence, at this time.

MR. O'NEILL. Perhaps the best thing to do is have Mr. Anolik retain Mr. Wool. This is the first time we have seen the letter and would like an opportunity to look it over briefly.

THE COURT. All right.

Q (By Mr. Anolik) Mr. Wool, did there come a time there was a meeting of creditors?

A. Yes.

Q Can you tell me whether any proposals were made, any proposals made to creditors during the meeting? Yes or no?

A. I believe there were.

Q Do you know whether or not ultimately the creditors accepted the proposal?

A. They didn't accept it because one of the creditors filed an involuntary petition in bankruptcy against Alburg Creamery.

Q You explained that that meant notwithstanding the wishes of the debtor, Alburg Creamery was forced into bankruptcy, isn't that true?

A. That is correct.

Q And, during the time that you represented the interests of MR. Falcone with respect to Alburg Creamery, did MR. Falcone ever ask you to do anything improper?

A. Never.

Q Mr. Wool, Mr. O'Neill asked you about a conversation you had concerning an entry which you indicated it was your legal opinion was perfectly proper; namely, $211,000 for credit for bad cheese which they said they had sustained in 1971. Do you recall that?

A. I recall that.

Q At that time, you were told they had never previously taken that credit?

A. That is correct.

Q Would you, to the best of your recollection, reconstruct that conversation for the jury?

A. Well, I advised him if they had not taken the credit, and if it was due, they still had a right to take it, whether 1971 or then.

Q In other words, even though they had not expressly taken it in 1971, as long as they had never taken it, yet, they could take it now?

A. That is exactly what I told them.

THE COURT. Have you examined the letter? Have you finished, Mr. Anolik?

MR. ANOLIK. I want to know if he agrees to it.

Q (By Mr. Anolik) Mr. Wool, incidentally, you had a conversation with Mr. Curreri, as well as Mr. Falcone?

A. Yes, I did.

Q And, Mr. Curreri, however, is not a principal of Falcone Dairy?

A. He was the bookkeeper.

Q The office manager and bookkeeper?

A. Of Falcone, not of Alburg, as I understand it.

Q Right, of Falcone. He had no particular function at Alburg at all, did he?

A. None that I knew of.

Q By the way, had you ever visited Alburg Creamery?

A. I believe I stopped there once; Mr. Falcone wasn't there. My wife and I were on our way to Montreal, and Leo Laramee was the manager, and we were going through Alburg, and we stopped there because I had never seen the plant, and I stopped in at that time and visited with Mr. Laramee and had a look at the plant.

Q When was that about?

A. It was prior to the fire, naturally, but I don't recall

the exact date.

Q But you had no direct contact at all with the creamery?

A. No, I didn't.

THE COURT. Any objection to the letter, Mr. O'Neill?

MR. O'NEILL. May I have just a moment, your Honor? May I inquire about this, your Honor?

THE COURT. Certainly.

MR. ANOLIK. If you are going to admit this, I want to ask further questions.

MR. O'NEILL. No objection.

THE COURT. "H" is admitted.

(Defendants' Exhibit "H" was received in evidence.)

Q (By Mr. Anolik) In "H", since it is in evidence, you stated: (Reading) "I have been asked by the principals of Alburg Creamery to call a meeting with you gentlemen for the purpose of making a distribution of the funds which remain and for the purpose of attempting to work out the payment of the balance due each of you over a period of 5 years so that, eventually, each of you would have received payment in full," is that correct?

A. That is exactly what I stated.

Q Was that the instructions of your client?

A. That was the instructions of Mr. Falcone.

Q And, this letter was written pursuant to his instructions?

A. Pursuant to his instructions. That went to Mr. Feen, Mr. Sperry of Langrock & Sperry, Mr. Reginald Abare in Barre, Vermont, who represented--all of these three attorneys represented other creameries.

Q Will you tell us who they represented?

A. Mr. Feen was the attorney for Milton Cooperative; Mr. Sperry represented National Farmers Organization, and Mr. Abare, along with an Attorney Burman of Boston, were attorneys for the United Farmers of New England.

Q If you recall, Mr. Wool, was Mr. Falcone prepared to put in his own personal assets to try to rebuild this plant, if you recall?

A. I think he was.

MR. ANOLIK. I have no further questions.

THE COURT. Mr. O'Neill.

REDIRECT EXAMINATION

Q (By Mr O'Neill) Mr. Wool, an involuntary petition in bankruptcy is based upon the petition of the creditor?

A. Right.

Q One cannot be involuntarily put into bankruptcy unless there has been an act of the person who is being sued to be put in? In other words, Alburg---

A. They have to have debts, and the creditors have to feel the debts are such they exceed their liability and seek

a petition based on that.

Q In this instance, wasn't it also true Alburg Creamery had given a priority to one of their creditors?

A. To whom are you referring?

Q Chittenden Trust Company.

A. A priority?

Q Yes. They had made a payment to Chittenden Trust Company without making payment to the other creditors, which, in and of itself, is an act of bankruptcy, isn't it?

MR. ANOLIK. Objection. This is not a correct statement of the law.

THE COURT. I will sustain the objection. I don't think it is a correct statement either, Mr. O'Neill.

Q (By Mr. O'Neill) Isn't an act of backruptcy something, when I say an act of bankruptcy---let's back off and cover that. Do you understand the term "act of bankruptcy" to mean for one to be led into bankruptcy?

A. Yes.

Q You and I, standing here, can't be put into bankruptcy, we have to be put in a certain financial situation to commit an act of bankruptcy?

A. Right.

Q Are among the acts of bankruptcy giving a priority to one creditor or another? Priority to one creditor over another?

A. I don't understand it simply as that.

Q Why don't you explain it as you understand it then?

A. Because I just don't follow your questioning. When you say "giving a priority," I think the matter of a priority is a matter to be determined by the court, and the seeking of an involuntary petition in bankruptcy is by filing certain documents indicating that a bankruptcy should be declared, but the matter of priority only indicates that a person is entitled to be paid prior to other creditors from the assets that are available in the bankruptcy, once there is one.

Q Mr. Wool, when one is put into bankruptcy, is it simply based on his financial condition?

MR. ANOLIK. I submit the Court alone can determine what the law is with respect to bankruptcy, not Mr. O'Neill.

MR. O'NEILL. Obviously, I am not making the law with respect to bankruptcy.

MR. ANOLIK. I don't understand his interpretations either.

THE COURT. Go ahead, Mr. O'Neill.

MR. O'NEILL. Your Honor, it is fairly clear Mr. Wool and I don't seem to understand each other in this area. We'll withdraw from the area. It seems to be more absent than probative.

Q (By Mr. O'Neill) Mr. Wool, you indicated that Defendants'

Exhibit "H"--may I see it, please--was sent out by you with the instructions of Mr. Falcone, is that correct?

A. That is correct.

Q This lists on it only Milton Cooperative, National Farmers Organization and United Farmers, also known as Yankee Milk, is that right?

A. These were the major creditors. Mr. Falcone felt the smaller creditors could be taken care of.

Q There were other creditors?

A. Of course, there were.

Q Now I think Mr. Anolik asked you whether or not Mr. Falcone was prepared to put up his personal assets. Did he ever do so, to the best of your knowledge?

A. I have some recollection he may have also put up some of his personal assets, after the bankruptcy.

Q Do you recall what?

A. No, I don't. I would assume it was in cash.

Q Other than this basic recollection you refer to, you can't refer to any specific item he put up in connection with the bankruptcy?

A. No, other than the fact I believe he indicated to me at one time he had put up some of his cash.

Q Now, assuming that the agreement had been made whereby the creditors would receive whatever they were due over a five-year period. This would be, basically, in the form of

a note indicating they would receive this money?

A. That is correct.

Q In other words, the money would not have been secured by more than it was at that point in time?

A. I have to take you back one step. There was insurance money involved. The insurance company had, immediately after the fire, paid a certain sum of money to the Chittenden Trust Company in connection with their mortgage. This left a certain sum of money due. There was a claim, as I recollect it. If I could see that letter, I will be able to refresh my memory. (Handed to the witness) Yes, there was a claim for the remaining money for services due to adjusting services. We had also indicated that we felt that we would be entitled to some attorneys' fees for our work in connection with the matter. The creditor, National Farmers, had a debt of $85,000; Milton Cooperative of $141,000, which was later questioned as to whether or not it was $210,000, and United Farmers had a debt of $40,000. The communication indicated that the remaining funds would be distributed among these creditors, and that they would then be given a note payable over five years, so that eventually every one would be paid in full. It was also indicated to these gentlemen that the payment in full of the balances, naturally had to depend on an agreement with these gentlemen and their clients, and the ability of

Alburg Creamery to rebuild the plant, and this was the basis for what was done. Naturally, there could be no other security for it. These were notes that were being offered in order that the plant would be rebuilt, the people would be re-employed, and the business would once again commence, and over a five year period any balances due these various people would be paid.

Q In other words, they would receive their money if the note was paid according to its terms?

A. That is correct.

Q Mr. Wool, what is the date of the letter?

A. October 29, 1973.

Q And, the bankruptcy, thereafter, began, is that correct? In December of 1973, the involuntary petition was filed?

A. That is right.

Q In January--was it in January, or do you recall approximately when it was that you had the conversation with Mr. Curreri with respect to the credits?

A. No, I don't.

Q At some point, is it safe to say at some point thereafter, Mr. Curreri brought it to your attention, these credits, and you indicated to him he could write off those credits, is that right?

A. I did.

MR. O'NEILL. Nothing further, your Honor.

MR. ANOLIK. I have nothing further.

THE COURT. All right, you may step down, Mr. Wool, and we'll take our morning recess at this time.

(Court recessed from 11:00 - 11:17 a.m.)

MR. COOK. I call Mr. Falivene.

(The witness entered the courtroom)

GENNARO FALIVENE, Sworn

DIRECT EXAMINATION

Q (By Mr. Cook) Mr. Falivene, would you repeat your name for the record?

A. Gennaro Falivene.

Q Where do you reside, sir?

A. I reside in Fairfield, Vermont.

Q And, do you have a business in New York City?

A. Yes, we do.

Q What is the name of that business?

A. Lucille Farm Products, Inc.

Q Are you an officer with that corporation?

A. Yes, I have been the Treasurer since 1967.

Q Since 1967?

A. Yes.

Q Can you tell me, from your recollection, during the year 1971 did your corporation--give the name to me once again.

A. Lucille Farm Products, Inc.

Q Did Lucille Farm Products, Inc. obtain cheese from Alburg

A. Yes, sir.

Q You don't list them at market value, do you?

A. No.

Q Because you would be changing it every few months, isn't that true?

A. As often as it changes, yes, sir.

MR. ANOLIK. No further questions.

REDIRECT EXAMINATION

Q (By Mr. O'Neill) Mr. Playford, to your knowledge, in the course of the accounting profession, is the taking of unrealized appreciation, or the recording of it on the books considered good accounting practice?

A. It has never received any wide spread acceptance in any accounting field.

RECROSS EXAMINATION

Q (By Mr. Anolik) You are not a C.P.A. though, are you?

A. No, sir.

MR. ANOLIK. We have no further questions.

THE COURT. That is all, Mr. Playford.

(Mr. Playford left the courtroom, and Special Agent Axten left his seat in the courtroom and approached the witness stand.)

ALBERT O. AXTEN, Sworn

DIRECT EXAMINATION

Q (By Mr. O'Neill) May we have your name, sir?

A. Albert O. Axten.

Q How are you employed?

A. Special Agent of the F.B.I.

Q Where are you stationed, sir?

A. Montpelier, Vermont.

Q How long have you been stationed in Montpelier?

A. One year.

Q Prior to Montpelier, where were you stationed?

A. Burlington, Vermont.

Q How long were you here?

A. Seven years.

Q And, how long have you been with the F.B.I.?

A. Twenty-seven years.

Q Do you have any particular expertise, or area of the F.B.I. you are assigned to work?

A. I specialize in the area of accounting.

Q How long have you specialized in that area?

A. During the period of my employment with the F.B.I.

Q And, what is your educational background with respect to accounting?

A. I am a graduate of Strayer College in Washington, D.C.

Q Are there other various qualifications within the F.B.I. which describes accountants?

A. Yes, sir, there is.

Q How are you described in that system within the F.B.I.?

A. Fully qualified accountant.

Q What does that mean to be a fully qualified accountant?

A. You can testify to your accounting knowledge in federal court.

Q Have you been recognized as an accounting expert in a number of United States District Courts?

MR. ANOLIK. I object to that, your Honor. It is hearsay.

THE COURT. We'll sustain the objection.

Q (By Mr. O'Neill) Mr. Axten, directing your attention to December 9, 1974, did you have occasion on that date to have a conversation with Mr. Joseph Falcone?

A. Yes, I did.

Q Who else was present, at that time?

A. Mr. Joseph Wool.

Q Who, basically, were you having the conversation with?

A. Mr. Joseph Wool.

Q And, did Mr. Joseph Falcone make a number of statements at that time?

A. Yes, he did.

Q Were those in response to questions by you, or just describe for us how the words came out of Mr. Falcone's mouth, to put it in simplest form?

A. I was in the process of discussing a proposed interview with Mr. Falcone, with Mr. Wool, and I was putting the pro-

posed questions to Mr. Wool, or the outline of what I was going to ask, and in the course of that, Mr. Falcone made statements.

Q What did Mr. Falcone state to you in the course of his interruptions with respect to the $300,000 entry on December 31, 1972?

MR. ANOLIK. I ask the word "interruptions" be stricken. There is no testimony of interruptions.

THE COURT. He just finished saying he interrupted. We'll let the question stand.

Q (By Mr. O'Neill) Mr. Axten, was there some statement with respect to the $300,000, approximately, entry of December 31, 1972 for unrealized appreciation?

A. Yes, there was.

Q What did Mr. Falcone state in that respect?

A. He stated they were attempting to increase the value of Alburg in order to present a favorable financial condition in order to obtain loans from banking institutions.

Q Did Mr. Falcone indicate what happened as a result of the negotiations?

A. He stated the negotiations collapsed; that the amount was reduced.

Q When you say "reduced," what do you mean by that?

A. The unrealized appreciation was returned to original entry on the books.

Q Did he indicate who authorized this to be done?

A. Yes.

Q Who is that?

A. The Office Manager, Joseph Curreri.

Q Was there any discussion with respect to a list of customers who had received defective cheese in 1971?

A. Yes, there was.

Q What did Mr. Falcone indicate with respect to that list of customers who received defective cheese?

A. He stated that was prepared by Mr. Joseph Curreri.

MR. ANOLIK. I would like to approach the bench a moment.

THE COURT. All right.

(At the bench)

MR. ANOLIK. Your Honor, so the record is clear, I assume that the objections that I made previously to the---

THE COURT. At the time of the suppression hearing?

MR. ANOLIK. Yes. I don't want to keep interrupting.

THE COURT. You don't have to.

MR. ANOLIK. I would like to express an additional objection. Namely, the witness testified that Mr. Falcone said that Mr. Curreri directed the elimination

of the appreciation entry. That is a statement from a non-testifying co-defendant, your Honor, and in Bruten against United States, your Honor, it is grounds for a mistrial, and I so move.

MR. O'NEILL. If I may say two things. First, Bruten, of course, only if the co-defendant does not take the witness stand, which Mr. Anolik has indicated he will. First of all, Bruten has been refined to the point where the only thing considered a Bruten statement is where the statement is directly exculpatory with the substance of the crime itself. This statement isn't Bruten.

MR. ANOLIK. I must say, I said my clients would testify, your Honor, and I believe they will testify. However, your Honor, that does not eliminate the Bruten problem because if something develops I don't want them to testify, they won't. We were then talking about whether or not Mr. Wool would have to come back. Right now, your Honor, I am relatively sure they will testify.

THE COURT. You indicated in no uncertain terms they would testify.

MR. ANOLIK. That is right. By the same token, I did not expect he would introduce this through this witness. I thought he was going to confront Mr. Falcone with it. I had no idea he would attempt to introduce it through this witness. I think it is improper to do so, your Honor.

THE COURT. We'll note your objection and overrule it.

(End of discussion at the bench)

Q (By Mr. O'Neill) Mr. Axtan, did there come a point in time when you conducted an examination of the records of the Bankruptcy Court with respect to Alburg Creamery, Inc.?

A. Yes, we did.

Q I show you Government's Exhibit Number "60". (Handed to the witness) What is that? How is that document referred to?

A. This is a Petition in Bankruptcy--involuntary bankruptcy; with the Statement of Affairs.

Q How is that particular exhibit generally referred to?

A. Statement of Affairs.

Q Now in looking over that, did you attempt to ascertain whether or not there were any accounts receivable reflected in the document?

A. Yes, sir.

Q Thereafter, did you make any attempt to reconstruct the books of Alburg Creamery with respect to accounts receivable?

A. Yes, I did.

Q First of all, why was it necessary for you to attempt to reconstruct the books?

A. The books and records were destroyed in the fire.

Q Mr. Axten, in attempting to reconstruct the accounts receivable of Alburg, what exactly was necessary for you to use to do that?

A. There was one record that was located. The General Ledger was in the possession of Jurgs & Company at the time of the fire. The General Ledger contains the postings on a quarterly basis.

Q Mr. Axten, I show you Government's Exhibit "15" Is this one of the documents, or one of the items that you used? (Handed to the witness)

A. Yes, it is.

Q And, what other documents did you use?

A. I used the bills of lading from the Great Northern Leasing.

Q Did you make any use of the bills of lading from the St. Johnsbury Trucking Company?

A. No, I did not.

Q Did you use the records of the Chittenden Trust Company?

A. Yes.

Q What record, in that respect?

A. Checking account maintained at the Alburg Branch of the Chittenden Trust Company.

Q I show you Government's Exhibits "64" and "65". (Handed to the witness) Would you tell us which, if either of those was used?

A. I used both of them.

Q Mr. Axten, would you tell us, first of all, how it was that you used the Alburg General Ledger?

A. The Alburg General Ledger reflected the postings on a quarterly basis to the various accounts. My particular interest was in the accounts receivable as listed in the General Ledger. I utilized the postings as of the end of the year which was December 31, 1972. This gave me a beginning balance as to the amount due as of the first of the year.

Q What was the next computation that you made?

A. I then computed the total weight of the bills of lading from Great Northern Leasing for shipments to Falcone Dairy Products, Inc.

Q Over what period of time?

A. From January 1st to July 13, 1973.

Q What did that provide you with?

A. It gave me a total weight of the shipments by Alburg.

Q And did you, at that point in time, have the records of the St. Johnsbury Trucking Company?

A. No, I did not.

Q Once you had the number of pounds that were shipped during that period of time, what did you do with the number of pounds figure?

A. I utilized only the weight pertaining to the mozzarella

cheese. There were different cheeses being produced in Alburg, but the common factor was mozzarella cheese. It had a more stable price by the month. The price was posted to the records in the Chittenden Trust Company.

Q And, did you make a computation taking together this poundage figure and the price from the Chittenden?

A. Yes, I did.

Q What did you arrive at, using that?

A. You mean the total amount?

Q You arrived at the dollar amount?

A. Yes.

Q What was the total dollar amount you arrived at?

A. For what period?

Q For the period January 1st through July 13th. In other words, the total amount your computations would indicate were shipped.

A. $812,169.28.

Q Now, what did you do with the Chittenden Trust Company records?

A. I totaled the amount of credit being received from the Alburg by the Chittenden Trust Company.

Q And, did you use all the checks that went through the Chittenden, or only those in certain areas?

A. We utilized those only in excess of $500.

Q Why did you not use those below $500?

A. Merely because there was only a few of the smaller amounts. Alburg had sales to restaurants and small jobbers. I was trying to arrive at the basic figure.

Q Now, first of all, you had arrived at this $812,000 figure, is that right?

A. That is right.

Q This represented all cheese shipped during that six months, according to the records?

A. Yes.

Q Did you include in the amount, in addition to the amount from the Chittenden Trust Company, any other amounts which were credited to Alburg?

A. I don't think I understand.

Q Did you have any information with respect to payments made on behalf of Alburg to any other companies?

A. Yes, I did.

Q What information did you use in that respect?

A. Payments were received by Milton for the benefit of Alburg. This consisted of prepayment in the latter part of 1973, this six-month period. I credited only the amount that was confirmed on Milton's books. The two other amounts, I could not confirm. One was a returned item--in other words, insufficient funds check. The other one, I could not trace. I only credited one check for 5,000.

Q What did this indicate as the total amount that was paid

during this period of time?

A. $451,071.74.

Q Now, so this was the amount which the records reflected was paid for the cheese during that period of time, is that right?

A. That is right.

THE COURT. You keep saying "that period of time". What period are you referring to?

MR. O'NEILL. I think at all times we are referring to the period from January 1, 1973 through July 13, 1973.

Q (By Mr. O'Neill) Is that correct, Mr. Axten?

A. That is correct.

Q What was the figure which you had from the books of Alburg as to the amount of standing accounts receivable on December 31, 1972?

A. $82,154.20.

Q Would you tell us what you did with these figures to arrive at the final figure?

A. I added the beginning balance of the $82,154.20 to the amount reflected in the weight bills to get a total amount shipped to either Falcone or on hand at the beginning of the year. I deducted from this amount payments I could locate.

Q What did this indicate to you as the outstanding amount of

the accounts receivable as of the date of the fire?

A. According to my computation the amount due, as of the date of the fire, or shortly thereafter, $284,942.31.

Q Now at the point in time when you made the initial analysis, did you have in front of you the General Journal of Falcone Dairy Products?

A. No, I did not.

Q Now, have you seen that volume since that time?

A. Yes, I have.

Q Now specifically directing your attention to the exhibit over here, Government's Exhibit "72", as blown up over here on the blackboard, have you had occasion to examine the original from which this was made?

A. Yes, I have.

Q And, did you do some type of analysis of this figure?

A. Yes, I did.

Q Now in that respect, did you have the Falcone Dairy Products Sales Book available to you?

A. Yes, I did.

Q Is that Government's Exhibit "44"? (Handed to the witness)

A. Yes, it is.

Q This is the volume you had in front of you?

A. Yes, it is.

Q Now having in mind the statement that the ad entries within the book were for returns or for fishy cheese, did you make

a computation of the amount of the red entries for the period from July 1, 1971 through December 31, 1971?

A. Yes, I did.

Q Now, did this relate directly to the computations you have previously given us with respect to the amount of the accounts receivable?

A. No, it did not.

Q We are talking about a separate area now?

A. Yes, sir.

Q In that respect, did you also examine the Purchase Journal of Falcone Dairy Products?

A. Yes, I did.

Q And, would that be Government's Exhibit Number "50"?

(Handed to the witness)

A. Yes, it is.

Q Now, Mr. Axten, in examining the Sales Journal, did you go through and examine the purchases by Falcone from Alburg Creamery for that last six months of 1971?

A. Yes, I did.

Q And, according to your computations within that book, what was the total amount of the purchases by Falcone from Alburg over that period of time?

A. $812,169.28.

Q Again, the amount of the red entries is what, please?

A. For what period of time?

Q For the period of time from July 1, 1971 through December 31, 1971.

A. $206,245.46.

Q

THE COURT. What was that again?

MR. AXTEN. $206,245.46.

THE COURT. The other one was the purchases by Falcone, the $812,000?

MR. AXTEN. Yes, it was.

THE COURT. Was that for the same period?

MR. AXTEN. Yes, it was.

Q (By Mr. O'Neill) Mr. Axten, would you step down here to the blackboard and bring some of your notes to write these down. (The witness left the stand) Go back to the witness stand and we'll go over some of those figures again. (The witness resumed the stand) Agent Axten, again, over the period of time from July 1, 1971 through December 31, 1971, what was the total amount of the red entries?

A. $206,245.46.

Q Now I think you indicated you examined the Purchase Journal also, is that correct?

A. That is correct.

Q What was the amount of the purchases from Alburg by Falcone over that period of time?

A. That is different from the figure you originally asked for.

Q What is that figure, please?

A. $514,683.95.

MR. ANOLIK. What figure is this? I have lost him.

THE COURT. Purchases by Falcone during the period July 1, 1971 through December 31, 1971.

MR. AXTEN. That is correct.

Q (By Mr. O'Neill) Purchases from Alburg?

A. Yes.

Q Now, have you also done a computation based on those books of the total amount of cheese which Falcone Dairy Products purchased during that six months period of time?

A. Yes, I did.

Q What is that figure, please?

A. $1,711,755.80.

Q Mr. Axten, would it be accurate for me to state the total cheese purchased by Falcone from all sources?

A. Yes.

Q Now, where did this cheese come from during that six months period of time which makes up the figure of 1,711,000 and so forth?

A. It came from Alburg, from Milton, from Richmond Creamery, from the firm identified as Kollica Dalbo at Waterloo.

Q Did you have a figure of the total amount received from Milton over that period of time?

A. Yes, I do.

Q What is that figure, please?

A. $1,152,780.54.

Q Mr. Axten, all these figures are for this period of time, is that correct?

A. That is correct.

Q Now in looking at the red entries within the Sales Book, is there any way that you can ascertain where the cheese came from, reflected in those red entries?

A. No, I cannot.

Q Now, have you examined the Sales Journal of Falcone Dairy Products for this period of time?

A. Yes, I did.

Q Are there figures in there for shipments to the Ferro Cheese Company?

A. Yes, there is.

Q What is the total amount shown for shipments to the Ferro Cheese Company?

A. Sales during that period, July 1, 1971-December 31, 1971, $70,027.14.

Q And, have you made a total there of the red entries for that period of time for the Ferro Cheese Company?

A. Yes, I have.

Q What is that total, please?

A. $86,011.42.

Q What does this mean in terms of the amount Falcone received compared to the amount of the red entries?

A. IT indicated a return of 142 per cent of the purchases provided it was in the same period.

Q Mr. Axten, have you gone through and made a calculation as to the amount of the red entries for the period of time beginning on January 1, 1971 all the way through December 31, 1973?

A. Yes, I did.

Q How have you broken that down? What length of periods?

A. On a quarterly basis. I mean, quarterly on a half year basis.

Q This is simply a totaling of the red entries for each six months period?

A. Yes.

Q Starting with January 1, 1971, through June 30, 1971, what do the red entries for that period of time total?

A. $127,876.75.

Q Now, next please, for July 1, 1971 through December 31st of that year?

A. $206,245.46.

Q Starting on January 1, 1972 through June 30, 1972, please?

A. $421,088.49.

Q All right. Next, for the period July 1st through December 31st of 1972?

A. $43,310.15.

Q And, for the last one, January 1, 1973 through June 30, 1973?

A. $90,789.25.

Q And, lastly, for the period July 1st through December 31, 1973?

A. $16,163.97.

Q These, once again,--I have been awhile writing them down--are the totals of all the red entries for those periods, according to the Sales Journal?

A. Yes.

Q Have you ascertained whether or not the Falcone Dairy Products was receiving the same amount of cheese during the period July 1st through December 31, 1973 as they had been receiving previously?

A. You want the totals for each quarter, or summary?

Q Just--I guess my question is directed at, in other words, January 1st to June 30th of 1973. There was a certain amount of cheese, over all, received by Falcone. Do you have the figure?

A. For the period?

Q January 1st through June 30th of 1973?

A. Yes.

Q What is that figure?

A. Purchases from Alburg, July, you are talking about, 1973?

Q Their over-all purchases, not just from Alburg.

A. I don't have them broken down. I have them broken down by dairies, not by the total.

Q I show you what is marked as Defendants' "E" and "F". Specifically, I am showing you Defendants' "E". (Handed to the witness) Have you had an opportunity to compare those copies and the circled entries with the Falcone Dairy Products Sales Book?

A. Only briefly.

Q And, during that period of time, can you tell us whether or not the circled entries compared with the red entries in all instances?

A. Not all instances; generally, it was.

THE COURT. Have "E" and "F" been admitted? I think they have.

MR. O'NEILL. They don't indicate that, but I think they have.

THE COURT. To make sure, "E" and "F" are admitted.

MR. O'NEILL. I think that is all we have at this time, your Honor.

MR. ANOLIK. May I proceed, your Honor.

THE COURT. Certainly.

CROSS EXAMINATION

Q (By Mr. Anolik) Mr. Axten, "E" and "F" in evidence are

photostats of the books that the Government had in their possession, isn't that true to the best of your recollection?

A. Yes.

Q And, the photostat does not show up clear, does it?

A. No, it does not.

Q Some circles might have been in blue pencil, is that correct?

A. That is correct.

Q That would not show up on that?

A. No.

Q That might account for some slight discrepancies, isn't that true?

A. It is possible.

Q Now going back to the beginning of your testimony when you stated that you had an interview with Joseph Wool, who is the attorney for Mr. Falcone, in your office, wasn't there an agreement between you and Mr. Wool at that time that you would not interview his client, Mr. Falcone?

A. Mr. Wool indicated that he did not desire an interview of his client.

Q And, you did not tell Mr. Wool, did you, that you were, nevertheless, recording the statements that Mr. Falcone was interrupting with, did you?

A. I wasn't recording.

Q You were taking them down, weren't you?

A. No, I was not.

Q You remembered them?

A. Yes.

Q You made no notes of them?

A. No.

Q Ever?

A. No.

Q This is from your bare recollection?

A. That is right.

Q How long ago was that?

A. I would have to look at the date.

Q Then look at the date.

A. December 9, 1974.

Q And now it is February, 1976 but you remember them pretty well, right?

A. Yes.

Q And, isn't it the practice of the F.B.I. to make memoranda of an interview?

A. I did prepare an interview report form, based on my memory.

Q And so you never made any rough notes at all then?

A. No, I did not.

Q I see. All right now, did you ever tell Mr. Wool, or Mr. Falcone, that your report would include statements interpreting utterances of Mr. Falcone?

A. No, I did not.

Q So, in other words, you put one over on him, so to speak, right? Is that fair to say?

A. I don't think so.

Q I see. The attorney goes in with the understanding and came out with something more than he expected, isn't that so?

A. There is no understanding when he came in.

Q He said he didn't want his client interviewed?

A. Yes, in the course of the interview of Mr. Wool.

Q Right, and Mr. Wool was talking to you, and you were talking to him?

A. Right.

Q And, Mr. Falcone was there and interrupting on occasion?

A. Right.

Q Do you think Mr. Wool indicated that his statements would be used?

MR. O'NEILL. Objection as to what MR. Wool's thoughts were.

MR. ANOLIK. I will withdraw the question.

THE COURT. All right.

Q (By Mr. Anolik) You gave a number of figures here to Mr. O'Neill. For example, red entries of $206,245, the total cheese purchased, you said, during the period July 1, 1971 to December 31, 1971 was $1,711,755 worth of cheese, right?

A. That is correct.

Q Would that be a particular brand of cheese?

A. I don't understand.

Q Mozzarella?

A. It would be the total purchased.

Q They were primarily in the mozzarella business, weren't they, if you know?

A. As far as mozzarella is concerned, yes.

Q But this does not take into account any inventory they had on hand before July 1st, does it? Do you know how much inventory they had on hand, of cheese, before July 1, 1971?

A. No, I do not.

Q If I told you that you had over $300,000 of inventory of cheese, would that refresh your recollection?

A. No, I did not.

Q You did not know that?

A. No.

Q That would make a little bit of a difference if that cheese was defective? It would show up here, wouldn't it, the cheese on hand?

A. I have no way of knowing that.

Q You have no way of knowing it? You didn't check it out, in other words?

A. There is no way to check it out.

MR. O'NEILL. We ask the gratuitous remarks

be stricken from the record. He has a way of confirming the statement.

MR. ANOLIK. I don't mean to do that.

THE COURT. That is all right. Proceed.

Q (By Mr. Anolik) Now you also said, I believe, that--did you have the Jurgs' accountant's statement in 1973 when you did this, so-called, reconstruction?

A. No, I did not.

Q Didn't you know that they had given a statement in March of 1973?

A. Yes, I did.

Q Didn't you use that statement?

A. No.

Q Wouldn't it have been helpful to you if you had used that statement?

A. Yes.

Q Any reason you didn't use it?

A. I wanted to use a more representative period of time starting with the last posting from the last annual year; in other words, December 31, 1972.

Q These figures would be exact figures? They audited the books?

A. They had not audited the books; they had posted the books.

Q All right, posted the books, but they certainly would have

had more information than someone who never saw the books, isn't that so?

A. It is possible.

Q Now, as far as you know, the credits which were taken by, or entered by Falcone Dairy, were duly posted in their books, isn't that true? You saw their books, didn't you?

A. Yes, I did.

Q The credits, every one of them, was posted in their books, isn't that so?

A. When you refer to credits---

Q The credits for 1971.

A. You are referring to the red entries?

Q That is right. They were in the books?

A. The red entries were in the books.

Q Right. Yesterday, we had some slips and we made available to you these slips, did we not?

A. Yes, you did.

Q And, they also indicated red entries, did they not?

A. The invoices themselves?

Q Yes.

A. I don't recall if I have seen them.

Q Defendants" Exhibit "G".

A. Yes, I did.

Q So these would be the bases upon which the red entries were taken in the books of Falcone Dairy, isn't that true?

A. I don't know. I didn't attempt to trace them.

Q You didn't trace them. I see. Now, can you tell me whether or not if a credit in the amount involved--it was two hundred ten some odd thousand dollars, I believe--if that credit had been taken against Alburg Creamery in 1971, what would have happened to the cash flow position of Alburg Creamery, if you know?

A. There is no way of my knowing that.

Q As an accountant, you told the Court you are an experienced accountant. What would have happened to its financial picture?

A. Well, if it was a wholly owned subsidiary, nothing could happen to it because the parent company would sustain it. If it was not wholly owned, it would go under.

Q It would definitely go under, isn't that true?

A. Right.

Q. You heard Mr. Laramee's testimony. You were sitting in the courtroom.

A. Yes.

Q He was trying to get credit from various people, wasn't he?

A. Yes.

Q He was trying to work on a profit margin, and if he had just 2-1/2 cents more a pound, he would have been in the black. Do you remember him saying that?

A. Yes.

Q Well, there was a separate set of books for Alburg Creamery, wasn't there?

A. I can't say that.

Q They were destroyed in the fire. You heard that testimony?

A. Yes, but I don't know that myself.

Q None of us know it, unless Mr. Laramee is lying to us. None of us know it?

A. Yes.

Q But he said they were destroyed in the fire, isn't that true?

A. Yes.

Q So, Mr. Laramee said they were destroyed in the fire, and he is trying to purchase milk, he is trying to purchase products and also trying to get a loan, if you recall, based on the credit of Alburg Creamery, isn't that true?

A. That is correct.

Q Fine. If they had to put a $210,000 credit that they have to give to Falcone, they are out of business, in effect, isn't that true? If they had submitted a financial statement with a wash like that, so to speak, they would be out of business, wouldn't they?

A. I can't answer that.

Q Falcone Dairy, so far as you know, and according to the testimony of Mr. Laramee, depended upon the production of Alburg Creamery to stay in business, isn't that true, to a large extent?

A. No.

Q Not true?

A. No.

Q What do they depend on?

A. Primarily, Milton. They purchased more from Milton.

Q Only during a certain period. They stopped purchasing, after awhile?

A. They did not.

Q Maybe my question is poorly phrased. They depended upon the production of Alburg Creamery, along with Milton, for their product, isn't that true?

A. That is correct.

Q Milton could not supply them with all the product they needed because they purchased a substantial amount of cheese from Alburg, isn't that true?

A. That is correct.

Q So let me just rephrase my question then with respect to Alburg. They were Alburg's, possibly Alburg's best customer, isn't that true?

A. Yes.

Q And, in production, Milton's production plus Alburg's was, obviously, the main stay of the cheese which Falcone could obtain, isn't that so?

A. Yes.

Q There did come a time they stopped doing business with the

Richmond Dairy or cheese company?

A. Yes.

Q Is that Dairy or Cheese?

A. Coop.

Q Richmond Cooperative. Now in 1973, or early 1974, a credit was taken on the books of Falcone Dairy for $210,000 in credit which they had posted in their books for 1971, isn't that true?

A. Would you explain that?

Q They took a credit in January of 1974 for $210,000 representing credits which the Falcone Dairy books showed for 1971, isn't that true?

A. If you are pertaining to red entries.

Q Yes, I am only talking about red entries. Credits are, generally, red entries. I mean, if you are trying to take a credit, you would look at the red entries rather than the black entries, isn't that so?

A. Yes.

Q I take it, Mr. Axten, you are not an expert in cheese. You are an accountant, right?

A. That is correct.

Q You heard the testimony of Mr. Falivene, Gennaro Falivene?

A. I wasn't present.

Q Were you in the courtroom this morning when Mr. Falivene testified?

A. No, I was not.

Q I thought you were here throughout the trial.

A. No.

Q I just assumed you were. Well, Mr. Falivene testified one of the reasons that his company, Lucille, did not take up an option to buy part of Alburg Creamery is that they felt Mr. Laramee was inefficient. You didn't hear that testimony?

A. No, I did not.

Q You don't know whether or not the cheese which was shipped during a certain period of time; namely, in 1971 to Falcons Dairy, you don't know what the quality of that cheese was, do you?

A. No, I do not.

Q You only saw the books, isn't that so?

A. That is correct.

Q Did you consult anybody else in the reconstruction of these records?

A. To what degree?

Q Any other accountant?

A. No.

Q Did you seek help of any certified public accountant?

A. No, I did not.

Q Are you, yourself, a certified public accountant?

A. No, I am not.

Q Are you a registered public accountant?

A. No, I am not.

Q You heard the testimony, did you not, of Mr. Accardi?

A. Yes, I did.

Q And, Mr. Accardi testified, did he not, that the entry of $210,000, while unusual because it was taken two years, or so, later than the credits were incurred, was, nevertheless, a proper entry if it had not been taken previously, which it had not been?

A. I heard the testimony.

Q Do you disagree with that?

A. Yes, I do.

Q You do disagree with that?

A. Yes, I do.

Q Tell me on what you base that.

A. Just logic.

Q Not accounting principles?

A. It is a violation there.

Q Of accounting principles?

A. Right.

Q Mr. Accardi has been a Certified Public Accountant for almost 33 years, with vast experience, and you say it is a violation of accounting principles to have done that?

A. Yes.

Q What kind of a violation is it?

A. Only from the principle standpoint.

Q If they, in fact, did not take the credits, you are saying that they waive it, they can't take it any more if they don't take it in 1971?

A. If they exist.

Q If they exist? You saw the books and records. You are saying that the books and records are false? Is that what you are testifying to?

A. I am not saying that. I am saying I have no way of verifying the $210,000. The---

Q You heard testimony under oath---

MR. O'NEILL. Excuse me. He started to answer the question and was cut off.

Q (By Mr. Anolik) All right, finish your answer.

A. The only question I have is the validity of the $210,000. There is no way of telling two years later what that was. The books don't reflect--the red entries don't reflect that this is what it is. It is just a credit, and I don't know the existence. If I knew it at that time, it would be a different feeling.

Q The point is that at the time that the credits were incurred, Falcone Dairy, according to statements that the F.B.I. apparently has recorded of the defendants here, there was never any intention to take the credit because they didn't want to put one of their main sources of supply out of business. You heard that, didn't you?

A. Yes.

Q In fact, they never thought they would ever have to take the credit because they wanted to keep their subsidiary in business, isn't that so?

A. Yes.

Q When a fire destroyed Alburg Creamery and the books indicated that, as far as their records are concerned, they had a right to take this, they weren't taking anything other than with respect to accounts receivable. They changed the picture with respect to accounts receivable by posting that credit, isn't that true?

A. Yes.

Q They lost considerable money, did they not? Falcone didn't make money on that, they were in a hole far and beyond $210,000, isn't that true?

A. I don't think I can answer that. I don't know what their financial picture was.

Q You heard the testimony of Mr. Accardi, didn't you?

A. Yes.

Q His testimony was under oath, wasn't it?

A. Yes.

Q Now, you also were talking about an unrealized appreciation entry of three hundred some odd thousand dollars, do you remember that?

A. Yes.

Q You questioned the validity of that too, didn't you?

A. Yes.

Q In other words, you heard the testimony with respect to a loan that was being sought by Falcone Dairy, do you remember that?

A. Yes.

Q Mr. Accardi explained that because of the fact that the plant or the property was being listed at book value for the purpose of the loan, and they fully disclosed that in their report, they listed it at market value, which was about $365,000. Do you remember that?

A. Yes.

Q He said, and it was listed right in the books, this is a temporary increase for the purpose of obtaining the loan, do you remember that?

A. That is not reflected in the books.

Q It is in his report. Maybe I am not quoting it exactly, but he indicated it was an unrealized appreciation of value, isn't that true?

A. That is correct.

Q When the loan did not go through, he returned that figure to the original book value figure it had before December of 1973, isn't that true?

A. That is correct.

Q What is wrong, accounting wise, about that?

A. Because they are attempting to apparently obtain loans based on a financial statement reflecting that their interest in Alburg had increased. In other words, their land and buildings had all increased in value and now entering it on the books and records as to what this value is, and banking institutions would grant a loan based on that. If that wasn't a true figure, the loan in which the funds were obtained, could possibly become obtained through false financial statements. In other words, if it was not true.

Q Mr. Axten, how much training have you had as an accountant, school-wise?

A. Four years.

Q Have you ever had refresher courses in accounting since then?

A. Yes.

Q Where?

A. At the F.B.I.

Q F.B.I.?

A. Yes.

Q At Quantico?

A. Yes.

Q Who taught those courses, accountants?

A. No, at various times it is visiting professors.

Q Are you telling this Court that an unrealized appreciation figure to change the book value to show current market value

has to be kept at that figure, and you can't return it to the book value if you can't get the loan?

A. No.

Q What are you saying?

A. I am saying it has to be an accurate figure.

Q Do you remember that he said this is for internal use only subject to an appraisal? Do you remember that he didn't say it was an estimate. Nobody said that it was an actual figure, they were estimating it. If you bought a house in 1945 at book value, it might be $10,000. Do you think it would be $10,000 today if it was in good shape? It might be thirty-five or forty thousand today. He was trying to show the unrealized appreciation to show if you do lend us money, this is what the market value would be if we sold it. Isn't that what he was trying to do?

A. Yes.

Q But then he said, "If they are not going to give us the loan, why keep it at that inflated value in the books? We are not trying to sell this building. We'll put it back to the value because two years from today that will not be an accurate figure". So, they keep it at book value, isn't that a proper accounting procedure?

A. I can't answer that. I don't know.

MR. ANOLIK. You don't know? I have no further questions of this witness.

THE COURT. We'll take our afternoon recess at this time.

(Court recessed from 2:55 - 3:25 p.m.)

(In the courtroom without the jury)

THE COURT. I understand counsel wish to put some sort of stipulation on the record at this time.

MR. O'NEILL. Yes, your Honor. Government's Exhibit "77" for identification is the grand jury testimony of Joseph Falcone and Joseph Curreri before the grand jury hearing in Vermont. Counsel, of course, have had an opportunity to examine that testimony, and with the concurrence of counsel for the defendants, the defendants themselves, and the Government, what we have done is go through and make changes in a number of pages; questions which were felt did not make sense were taken out, and some obvious misinterpretations by the court reporter, such as Mr. Accardi being Mr. Ricardi and things of this nature were also taken out.

It is our understanding that the defendants stipulate, if called, the grand jury reporter would testify to the accuracy of this transcript, and, therefore, they have no objection to any particular portions of it being admitted. What we propose to do, your Honor, and I believe this is acceptable, is read this to the jury on a line-by-line basis, essencially. I understand that Mr. Anolik has

a request with respect to the testimony being put before the Court in context.

MR. ANOLIK. We ask the Court inform the jury this is an exparte proceeding; that defense counsel is not permitted in the grand jury room and no objections permitted; that the witness is merely there under subpoena to answer questions by the United States.

THE COURT. Yes, we'll so inform the jury, and with that understanding I understand you have no objection.

MR. ANOLIK. That is correct, your Honor.

MR. O'NEILL. Thank you, your Honor.

THE COURT. All right, you may call in the jury. So, I guess we'll admit "77" at this time.

(Government's Exhibit "77" was received in evidence.)

(The jury entered the courtroom and ALBERT O. AXTEN resumed the stand.)

THE COURT. All right, proceed, Mr. O'Neill.

REDIRECT EXAMINATION

Q (By Mr. O'Neill) Mr. Axten, Do you have any particular way of interviewing a person as to whether you take notes or do not take notes?

A. Yes, I do.

Q What is your procedure in that respect?

A. It depends on whether the person is a subject of investigation or a witness; also depends on the extent of the interview that is going to be taking place.

Q Would it be fair to state at some point you take notes, and some times, you don't?

A. Yes, I do.

Q Following the interview of a person, how long do you have under F.B.I. internal regulations to reduce that interview which you have received to written form?

A. Five working days.

Q Now directing your attention specifically to the discussion you had with Mr. Wool, with Mr. Falcone present on that occasion, was there any understanding between yourself and Mr. Wool and/or Mr. Falcone as to whether you would ever make a written report of the conversations?

A. No, there was not.

Q Have you ever had such an understanding with any one?

A. No.

Q What would such an understanding be in keeping with F.B.I. regulations?

A. No, it would be a violation.

Q At the time you were there at that point in time we just discussed, who, basically, was speaking?

A. Mr. Wool.

Q Was Mr. Falcone speaking to him, or was he speaking to you,

or how did the words come from Mr. Falcone's mouth?

A. Directed at me.

Q Would you describe them in a low tone of voice, high tone of voice? How would you describe it? Was it something you could easily hear?

A. Yes.

Q Was there any kind of request to you not to make any report of the statements that Mr. Falcone was making?

A. No, there was not.

Q Now, with respect to the Sales Book, you have examined the red entries in the Sales Book, is that right?

A. Yes, I have.

Q Do you have any way of knowing if any red entries are missing?

A. No, I do not.

Q In other words, you can see what you see in front of you, and if they are not in front of you, you have no way of knowing?

A. That is right.

Q Is there any way of you looking at the red entries to ascertain what they are for other than credits?

A. No.

Q Can you tell if they are bad cheese, discounts, returns?

A. No.

Q Is there a way of examining the red entries in the book as

to what the red entries are for in terms of whose cheese it was, where it originally came from?

A. No.

Q Now with respect to the $210,000 entry on the books of Falcone Dairy, what would the absence of that entry on the books of Falcone--excuse me, Alburg do to a financial report of Alburg?

A. It would make the Alburg financial picture much brighter.

MR. ANOLIK. I didn't hear the answer, your Honor.

A. It would make the financial picture of Alburg much better.

Q (By Mr. O'Neill) Without an entry being made in the books of Alburg, would the Alburg books be accurate?

A. No, they would not.

Q Now I think Mr. Anolik asked you whether or not it would have been possible for Alburg to continue to exist in 1971 if this $210,000 in credits had been charged to it at that point of time. Assuming this is a wholly owned corporation, in other words, a closed corporation owned by other corporations of the same nature, would it be possible for the corporation to continue in existence?

A. In my opinion, yes.

Q How would it be possible to do so?

A. Because it is wholly owned. The parent company is, in effect, responsible for everything that the subsidiary does.

Q Would it be possible for the parent company to simply put more cash into the subsidiary company?

A. Yes.

Q Now with respect to the unrealized appreciation which has been discussed here in terms of your investigation, has there been any indication, from your point of view, that the figure for unrealized appreciation was verified by means of appraisal or anything of this nature?

A. No.

Q To the best of your knowledge, is this figure necessarily accurate? This unrealized appreciation figure?

A. Not to my knowledge.

Q Now, Mr. Axtan, have you computed, based upon the Falcone books, the amount of cheese that is shown as having been purchased by Ferro Cheese Company for the period 1970 through 1974?

A. Yes, I did.

Q And, what is that total?

A. From the period January 1, 1971---

MR. ANOLIK. I object to this. This is going into something not on direct examination. It is not permitted, your Honor. We never touched on this previously.

THE COURT. We are going to permit this, Mr. Anolik. For your benefit, and the benefit of Mr. O'Neill, we permit some liberty in cross examination and we'll extend the same privilege to you, should that develop.

MR. ANOLIK. Thank you very much.

MR. O'NEILL. I will state for the record that figure is basically one I asked Mr. Axten about before.

THE COURT. You may proceed.

Q (By Mr. O'Neill) What is that total for the period 1970 through 1974?

A. I have it only for the period 1971.

Q Excuse me, 1971.

A. January 1, 1971 through December 31, 1973, the sales to Ferro Cheese Company total $129,888.95.

Q You totaled the red entries for this same period of time?

A. Yes, I have.

Q What is that total?

A. For Ferro Cheese Company for the same period of time, red entries total $102,525.29.

Q Now, Mr. Axten, is there any way to tell by looking at the red entries from the Falcone Sales Book whether or not those red entries are attributable to Alburg?

A. No, there is not.

MR. O'NEILL. That is all we have, your Honor.

THE COURT. Mr. Anolik.

RECROSS EXAMINATION

Q (By Mr. Anolik) Mr. Axten, first of all with respect to Mr. Wool isn't it a fact you had an agreement with Mr. Wool that you would not interview his client, Mr. Falcone? Wasn't that the understanding?

A. No, it was not.

Q Didn't you ask if you could interview Mr. Falcone?

A. Yes, I did.

Q What did Mr. Wool say?

A. He wanted to know the reason for the interview; whether or not he had to determine whether this was some type of civil proceeding or a criminal proceeding.

Q And, he wanted to talk to you first, didn't he?

A. Yes.

Q Therefore, he didn't want you to interview his client until he had spoken to you first, isn't that so?

A. I can't tell. He came in with his client; he didn't exclude his client.

Q Didn't you make a report saying Mr. Wool did not want his client interviewed?

A. Yes.

Q You said that in your report?

A. Yes.

Q So, he must have said it, right?

A. Yes, he did.

Q But, again, at least you did include in your report, unbeknown to Mr. Wool, statements uttered by his client by way of interruptions, isn't that true?

A. Yes.

Q You never told Mr. Wool about that, at any time?

A. No, I did not.

Q Did you ever say, "Too bad, Mr. Wool, your client said something I could hear. I am putting that in my report". You didn't say that, did you?

A. No, I did not.

Q Now with respect to the red entries, you don't know what the purpose of the red entries were at all except in accordance with what you were told, isn't that true?

A. Yes.

Q And, with respect to Ferro Cheese Company, the figure you have there, that could be a very substantial portion and could pertain to Milton Cooperative, isn't that possible?

A. Yes.

Q It could pertain to almost anything, isn't that so?

A. Yes.

Q Again, you are giving your figures without knowing specifically what the basis behind them are, except what appears in the book, isn't that true?

A. Yes.

Q You don't know of your own knowledge that that pertains to

Alburg or something else, isn't that true?

A. That is correct.

Q Now you say, in your opinion, the entry of $210,000 was required to show the accurate books of Alburg, is that correct?

A. Yes.

Q In 1971?

A. Yes.

Q In other words, you are saying that because Falcone Dairy was a parent, it wouldn't make any difference, is that right, because they could carry the company anyway, is that true?

A. Theoretically, yes.

Q That is, provided Falcone had money to do so, isn't that true?

A. Yes.

Q If they have no money and they give them a $210,000 debit in the bbooks, credit against the Falcone books, they are both out of business, isn't that true?

A. I can't say that.

Q Well, if a parent company such as Falcone Dairy, which you will concede was looking to Alburg for its supply, certainly, of whole milk cheese, you know that Milton was in the business of a different type of cheese, a reduced fat cheese in many instances--are you aware of that fact?

A. No, I was not.

Q You don't know what kind of cheese they made?

A. That is right.

Q It is unfair to ask you that, but whatever it is, a great deal of the production of Alburg went to Falcone, isn't that true?

A. Yes.

Q Now, Falcone did not want to dry up one of its main sources of production, isn't that true?

A. That is correct.

Q Therefore, they told the F.B.I. that they elected in 1971 not to charge these credits, which they could have, against Alburg for fear it would dry up Alburg; that Alburg, based upon its own books--it had a separate set of books--would not get credit from any one, and couldn't get it from Falcone because they didn't have it to give it, so they stated there would not be a cash flow from other creditors, or other people might be inclined to lend them money, isn't that true?

A. That is what they said.

Q Isn't it a valid assumption that it would have affected their financial position?

A. It would have affected their financial position.

Q Very disastrously, isn't that so?

A. I don't know.

Q You are an experienced accountant, you say. Now if you are a lender and someone comes to you, and you see an entry there that you owe $210,000 to Falcone Dairy, you say, "We'll not lend any money. You have no money to begin with. That is your parent company and they have no money either, forget about it," so Falcone elects not to exercise its credit, and they could have written that off if they desired to absorb it. They didn't have to exercise it, did they?

A. No, they did not.

Q Are you aware of the statute of limitations on contract debts?

A. No, I am not.

Q Ever hear of the Statute of Limitations?

A. As pertains to what?

Q As pertains to contracts, sales contracts?

A. No, I have not.

Q Well, if they have a credit coming, is there anything in the accounting field that you know of that says that they cannot take it on a deferred basis ? Ever hear of deferred entry?

A. Yes, I have.

Q So, they could have deferred taking it?

A. Yes. They would have made an entry for that.

Q Talking about bookkeeping entry, they showed the credit.

There is no doubt about that. There were red entries for it. There were red entries in the Falcone Dairy books indicating credit?

A. There were red entries.

Q No question about that?

A. No question.

Q The only entry that was not there, that they did not, as yet, charge it against Alburg, isn't that true?

A. Yes.

Q In 1974, after speaking to their lawyer, they decided to charge it against Alburg, isn't that true? That is what they said, isn't that so?

A. Yes.

MR. O'NEILL. We object to what it is and asking Agent Axten if it is so.

THE COURT. We'll sustain the objection as to form.

Q (By Mr. Anolik) But you were told, were you not, that the reason that they did it in 1974 is because their attorney told them they could do it, isn't that so?

A. That is what they told our agents.

Q Now you said, it is your testimony, rather, that was not proper accounting procedure?

A. Yes.

Q That is your testimony, is that right?

A. Yes.

Q Now you also indicated that you believe that the unrealized appreciation entry should not have been removed from the books either, right?

A. Yes.

Q Let me ask you this. If you bought one share of A.T.T. and it sold at $100 in 1950, and you sold it for $200 in 1976, you would have a 100 dollar capital gain, wouldn't you?

A. Yes.

Q Now, if you wanted to get a loan in 1976, not selling it for that $100 that you invested in A.T.T., you could go to the bank and say "It is true, on my books I list this A.T.T. stock at $100, but look at the market value, it is worth $200 today. Won't you lend me $150 on it?" They will say, "Yes, on its unrealized appreciated value we will do that," but the bank says, "We don't like the way you are running your business, so while we might do it with some one else, we won't do it with you. No, we won't give you the money. We won't give you the loan." What you have to do is return it to its purchase price, its book value, because five years from now when you want to sell it, you can't use the appreciated value of 1976, because you never paid this amount for it. Your book value at the time of purchase is different from the time of sale because if they

used the appreciated value, they would be cheating the Government because then this capital gain would be less.

MR. O'NEILL. I don't think we have heard a question yet.

Q (By Mr. Anolik) Isn't that so? That is the question.

THE COURT. Is that an objection?

MR. O'NEILL. Yes, your Honor.

THE COURT. We'll take the answer.

Q (By Mr. Anolik) You may answer it.

A. I would say a qualified yes.

Q How would you qualify it?

A. Somehow or other, you would have to reflect the increase somehow or other. That would have to show up. If you are dealing in stocks, you would have to show the increase in your income somewhere. You would have to report that for income tax purposes, whether a capital gain, or if you are in a business.

Q When you sold it?

A. Yes.

Q But if you didn't sell it, you wouldn't have to?

A. No.

Q Can I list my stocks on unrealized appreciation value?

A. You can.

Q I can? I can list my stocks on unrealized appreciation value? I buy stock for $10,000 in 1965 and today they are

worth $20,000, I can list the value of them at $20,000, you are saying?

A. No. I said you can. I didn't say you should.

Q I can do anything. I can walk out of the courtroom, except the Judge would call me back?

A. That is correct.

Q That is right. I am asking you whether it is good accounting practice to do that?

A. I will answer, no.

Q Now, if the book value, your base value that you acquired the asset at was $100 and you are trying to get a loan, so you say, "Look, gentlemen of the bank, this is now worth $200. If I sold it tomorrow I can get $200 for it, so don't look at what I bought it at. Give me a $150 loan". Again, if they don't want to give you the loan, but you have shown in the statement the value today of the asset, if you sold it--unrealized appreciation, it is called--the bank says, "Sorry, we are not going to give you the loan," well, you can't keep it at that figure because you didn't sell it. You have to put it back to its original purchase price, isn't that true?

A. If you are attempting to get a loan, yes.

Q If the loan fell through, you have to put it back before what it was before you increased its value for the banking purpose, isn't that so?

A. Yes.

Q That is all they did here. He put a temporary entry of unrealized appreciation to show if you want us to sell our asset, we can get this today, but if you won't give the loan, we'll put it back at the original cost value. That is all he did, isn't that true?

A. Yes.

Q Then what is fraudulent? What is improper about it?

A. It is two over-all pictures.

Q What over-all picture?

A. Can I explain?

Q Of course.

A. They had the defective cheese as reported, $210,000. If that had been recorded properly, the financial statement prepared by Alburg, including this appreciation, the $210,000 would, in effect, reduce any appreciation you might have had. In other words, any financial statement prepared at the time of this appreciation could, theoretically, be a false statement since it would reflect accounts receivable that didn't exist.

Q Theoretically, be a false statement? This is not a theoretical situation. They put it right down in there. January 31st they put an entry for credit. Nobody was deceived by it. Everybody saw it was put in. Where is there anything improper?

A. I mean, the Alburg books.

Q They were burned up.

A. No, I am talking about their financial statement.

Q Their financial statement, because they didn't take the credit yet, they deferred taking the credit.

A. You mean, Falcone.

Q Falcone didn't take it. He didn't want to put his own supplier out of business.

A. But the financial statement, was that Falcone's or Alburg's?

Q The financial statement we are talking about right now for purposes of a loan was Falcone's. The unrealized appreciation was in Falcone's books, as I understand it.

A. I never saw it, sir.

MR. ANOLIK. All right. I have no further questions.

REDIRECT EXAMINATION

Q (By Mr. O'Neill) Mr. Axten, is it possible for one to go into a financial institution, let's say, 100 shares of A.T.T and for a stockbroker to check with a reputable broker--or with a lawyer--and ascertain the value of the stock at that point in time?

A. Yes.

Q Is there any evidence this was done, any appraisals with respect to the figures used?

A. No.

Q When is gain normally realized within the accounting profession?

A. At the end of the time period; end of accounting period.

MR. ANOLIK. I object to that, your Honor. That is not a proper statement. It is on sale.

THE COURT. That is something you can examine him on, if that is his answer. We'll overrule your objection.

Q (By Mr. O'Neill) When is gain realized for income tax purposes?

A. At the end of the reported period. If at the end of the fiscal year, the end of the fiscal year.

Q If the $210,000 credit which was charged---if the $210,000 credit which was claimed in 1974 had been taken in 1971 on the Falcone books, what would it have done to the Falcone financial situation at that time on the books. What effect, dollar wise, would it have had on their financial situation?

A. It would have reduced it.

Q Reduced what?

A. Their financial position.

Q Falcone's or Alburg's?

A. Alburg's.

Q What effect would it have had on the Falcone books?

A. It would have increased them.

Q Again, with respect to the red entries made in the Sales Book, is there any way to tell what those are for other than those are credits?

A. No.

Q Is there any way to tell what cheese it is for?

MR. ANOLIK. Objection. That has been answered, your Honor.

THE COURT. Have you finished the question?

MR. O'NEILL. I think so. I don't know what the objection is.

THE COURT. State the question again.

Q (By Mr. O'Neill) Is there any way to tell whether these red entries are attributable to Milton or Alburg, or where the cheese is from?

MR. ANOLIK. I merely said it had been answered; that is all.

THE COURT. We'll let the answer stand.

Q Within the accounting profession, if a deferred entry is to be made, is it normally a type of notation made that one is being deferred?

A. Yes, there will be a deferral account. In other words, there will be a notation saying, for example, in 1971 that the entry for 1971 was being deferred.

Q That is actually stated?

A. Yes.

Q When you had your conversation with Mr. Wool and Mr. Falcone, did Mr. Wool make any requests to you with respect to whether or not you should report this conversation, or anything of this nature?

A. No.

Q Did you ever, previously, have an understanding with Mr. Wool not to record a conversation with a client?

A. No.

MR. O'NEILL. Nothing further, your Honor.

RECROSS EXAMINATION

Q (By Mr. Anolik) You never had any agreement that you wouldn't, either?

A. No.

Q Or that you would?

A. No.

Q Now let me ask you this. You just made a statement that the gain is realized at the end of the accounting period, is that right?

A. Yes.

Q If I bought 100 shares of stock at $1,000 in January of last year, and I am on a calendar year basis for taxes, you are saying at the end of that fiscal period, I have to show my gain, is that correct? I have to pay taxes on my gain?

A. No, only on your income.

Q

Q That means, you have to sell it, isn't that true? You don't get income if you don't sell it?

A. You obtain dividends on your stock.

Q My stock didn't pay dividends, I am not that lucky.

A. Okay, you won't have to.

Q Unless I sold it, isn't that true?

A. That is correct.

Q So the answer is, not at the end of the accounting period, it is when the item is sold that you realize your gain, isn't that so?

A. Right.

Q Because dividend is income, it is not realized capital gain, isn't that true?

A. Right.

MR. ANOLIK. No further questions.

MR. O'NEILL. Nothing further, your Honor.

THE COURT. All right, Mr. Axten, you may step down.

(Mr. Axten returned to his seat in the courtroom.)

MR. O'NEILL. The next item we have is Government's Exhibit "77", the grand jury testimony of Mr. Falcone and Mr. Curreri.

THE COURT. All right. Ladies and gentlemen, at this time counsel for the Government are going to read

to you the grand jury minutes; that is, the testimony given by Mr. Falcone and Mr. Curreri before the grand jury some time ago, and I just want to explain to you that a grand jury proceeding, in a grand jury proceeding these individuals are not represented by counsel. The grand jury is present, somebody representing the Government is present, the questions are asked of the individual concerned, and they give their answers. So there are no objections. It is not formal court proceeding in that manner. Is that satisfactory?

MR. ANOLIK. That is satisfactory, your Honor.

MR. O'NEILL. That is satisfactory to the Government, your Honor.

THE COURT. All right, Mr. O'Neill.

MR. O'NEILL. Ladies and gentlemen, this document reads as follows:

(Reading) "Rutland, Vermont, April 10, 1975, 9:50 a.m.--twenty-two grand jurors present.

JOSEPH FALCONE, being duly sworn, testified as follows:

Examination by Mr. Reed.

Q Will you state your name, sir?

A. Joseph Falcone.

Q Before we begin, Mr. Falcone, we will advise you that this is a grand jury investigation which does pertain directly

to some business activity here in Vermont and this being a grand jury investigation, it is difficult to know what the evidance will produce. You may be a target of the grand jury, and, as such, may end up as a defendant here. I will advise you that you have the right to remain silent. What you do say, may be used against you in court in the future; everything that is said is being recorded. You have the right to refuse to answer any questions if you feel your answer may tend to incriminate you. You have the right to have an attorney to consult outside the grand jury room who you can confer with and can assist you as to how to answer each specific question. Are you aware of these rights?

A. Yes, but I don't have an attorney."

MR. ANOLIK. Excuse me. Your Honor, Mr. Murdoch will remain in the courtroom. May I be excused to make a call?

THE COURT. Yes.

(Mr. Anolik left the courtroom)

(Mr. O'Neill continued with the reading of Government's Exhibit "77" as follows.)

Q "Do you wish to have an attorney?

A. I don't think I have anything to hide.

Q I won't ask you any questions if you feel you should have an attorney outside to consult. Did you talk with your

attorney this morning?

A. I called him.

Q Do you know that he called me?

A. Yes.

Q What did he tell you?

A. The United States Attorney's questions would be the same as before.

Q Did he tell you the general questions would concern your business activity here in Vermont?

A. Yes.

Q To be very specific, he didn't represent to you I was going to ask you the exact same questions?

A. Yes, he did. I don't know what they were. I only know from the report. He told me that the answers to the questions would be under oath.

Q The inquiry is going to be broader than that. I can't represent to you that I am going to ask you the exact same questions in regard to the bankruptcy proceedings up here in Vermont and the Albury Creamery. I didn't represent they would be the same questions. If you have some doubts you are competent to respond without conferring with him, perhaps you should have him here. If you decide you are competent to answer on your own, it is not going to be any broader than I represented to him.

A. If I refuse to answer questions, can I go outside and

call him?

Q You have the right to refuse to answer any questions I ask you. You can refuse to answer any questions I ask, or waive your right to refuse and answer questions you want to answer and not answer questions you refuse to answer.

A. I will answer any questions I can. You see, my attorney is in New York, and his assistant is here in Vermont.

Q We will proceed on that basis. I will advise you what you say is under oath so you won't have a second chance later on. I don't feel you should have to go forward unless you feel you are fully protected legally.

A. I will answer as best I can.

Q Anyway, we will proceed on that basis. Just by way of background, what is your business now?

A. I am in the cheese business.

Q Where are you located?

A. In New York.

Q Did you have an involvement in the cheese business here in Vermont?

A. Yes, I did.

Q Would you tell the grand jury how you were involved?

A. We had a plant, Alburg Creamery, which is where we made cheese. We manufactured and sold it.

Q What year did you begin to do business in Vermont?

A. About 1960.

Q What was the name of your business, at that time?

A. Falcone Brothers, Brooklyn, NEW York.

Q Where was your plant located?

A. Alburg Creamery.

Q From Alburg cheesemaking, did you go into Alburg Creamery?

A. No, Milton Creamery.

Q Did there come a time when you established your own plant?

A. Yes, in Alburg.

Q Would you say when that was?

A. I would say it was approximately six years ago.

Q When the corporation was set up, who was the president of the Falcone Dairy?

A. I operated it.

Q Who was the president?

A. My older brother was president, and my younger brother was treasurer.

Q Did you have Mr. Curreri working for you there?

A. Yes, fourteen or fifteen years.

Q With unbroken service?

A. Yes. He was employed for Falcone Dairy as office manager.

Q Was he so employed up here for Falcone Dairy during the time period of Alburg Creamery's existence here in Vermont?

A. From 1960, until recently.

Q And, Alburg Creamery hadn't declared bankruptcy, you say?

A. Yes, it was declared bankrupt involuntarily.

Q Relating to your activities here, with specific reference to Alburg Creamery, I believe you just testified that Alburg Creamery was declared bankrupt involuntarily?

A. Yes.

Q When did the bankruptcy proceedings commence?

A. About a year ago, I believe.

Q Which would be the early spring of 1974?

A. I believe it was the fall of 1974. I am not sure of the date.

Q Let me just go back one step further in Alburg for the purpose of background. Was there a time when Lucille Dairy was involved?

A. Yes, at inception. Prior to being owned by Falcone Dairy Products, Lucille Dairy had an option to participate in Alburg Creamery, but did not pick up the option.

Q They did participate but didn't pick up the option?

A. No, they didn't.

Q During what time was this?

A. That was at the inception of Alburg Creamery. That was--I don't remember the dates--1971 or 1972 when we formed Alburg Creamery, Inc.

Q How much of the production would go to Lucille Dairy? How much would go to Falcone?

A. They would take more than half the production, depend-

ing on how much milk we had and who needed it.

Q Did you, Mr. Falcone, have an occasion to have an interview with the F.B.I. on the 9th of December, 1974, do you recall?

A. I have had conversations with them; the dates, I don't know.

Q Now I have before me a record of what the F.B.I. felt you said to them at that time, which I will provide you with. I give you this just to refresh your recollection of what was said in the interview, and if you disagree with anything in there from the point of view you didn't say it, or was not in the interview, I want you to say so.

A. On one, it says it was a rancid fishy taste that we had. It was a rancid odor. I tried to describe it as best I could."

MR. O'NEILL. There is a parenthetical not testimony of the witness; by the grand jury reporter which reads: "A ledger purporting to be the General Ledger of Falcone Dairy Products, Inc., marked Government's '1' for identification," and there is a continuation of the answer by Mr. Falcone---

"There is one thing incorrect here. It says, they state that all cheese made at Alburg and Milton Coop. would bear Falcone label regardless of vendor. We pack private labels on both claims.

Q In the event that you would pack a private label and have

it returned, would it still be returned to Falcone Dairy Products?

A. Yes.

Q So the cheese referred to here, regardless of what label, would come back to your warehouse, and you would have to credit your purchaser?

A. Yes.

Q I will just follow what you read and ask you questions so the grand jury can understand what we are talking about. I have here a ledger marked Government's '1' for identification and ask you if you can identify it?

A. It is the General Ledger.

Q General Ledger of what company?

A. Falcone Dairy Products.

Q From what dates?

A. June 1972 to May, 1974.

Q Would you just leaf through the pages of the General Ledger, and I will ask you if you can recognize an entry into the accounts payable concerning the return of bad cheese, Page J-1. I am now pointing to Accounts Payable, Alburg, 1/10/71, $1.05. Do you recognize that, sir?

A. I don't, because I don't handle this. This is about the second time I have seen the journal.

Q You didn't make the entry?

A. No.

Q The thrust of the entry we have to get from there is payable to Alburg Creamery, it says here?

A. I don't know.

Q Doesn't it state there that the entry was to credit customers due to defective cheese?

A. Yes.

Q And, they were customers of Falcone Dairy Products?

A. Yes, but the cheese came from Alburg Creamery.

Q That is a six-month period, 1/10/71, and as of that date, the cheese was returned to you by customers for some defect?

A. Yes, if it was in your journal.

Q Do you know why it was returned?

A. Yes, I believe it was the lake water that was used at Alburg developed what caused a bad taste and a bad odor.

Q As you say, fishy?

A. Yes, fishy and rancid.

Q Was something done to correct this?

A. We sunk a well.

Q When did your company do this?

A. I believe it was six months to a year later. The plant manager took care of this.

Q That would take you into 1972?

A. Probably July to December, 1971. Any time to a year later.

Q Did the well drilling correct your problem?

A. Yes, it helped us.

Q Now, related to this entry, did you have any conversations with Mr. Curreri concerning the entries in this ledger?

A. Yes, he told me about the credit in 1971, and I said to check the account and see if it was proper, then check with the attorney, and we did.

Q This journal reflects to December 31, 1974. Excuse me, I believe it is January 31, 1974. Do you agree with me?

A. It was some time around that time.

Q Do you know of your personal knowledge, after you entered into bankruptcy proceedings?

A. It was after, I believe.

Q I believe you have testified that rancid cheese was returned as defective from July to December, 1971?

A. Yes, I made it July.

Q Why was the entry of credit not made in 1971 and held up until 1974?

A. Because we couldn't bankrupt the company. We tried to handle the problem. We had inventory by the time some was made up. We wouldn't know until a couple of months later. So in order not to bankrupt the company, we tried to help the situation.

Q So, Falcone paid this?

A. We tried to help the situation.

Q What were you doing when acting as operator?

A. Alburg Creamery was providing the milk. We had farmers, Milton Coop., I believe Cumberland Farms.

Q So regarding the $210,000 entry and the statement in the ledger at the time of the bankruptcy proceedings, you signed the Statement of Affairs?

A. Yes, I had to do that.

Q You signed that knowing that was on the record?

A. Yes.

Q On that statement, how much was shown Alburg Creamery was owed by Falcone Dairy Products? Did you owe Alburg Creamery $100,000 at this point?

A. I don't remember the figure.

Q Now that Alburg Creamery was in bankruptcy, Falcone Dairy Products still owed them considerable amount of money?

A. I am not sure whether we took it before, or when. I can't remember. The accountant gives me papers, and I sign them. I can't tell you whether it was before or not.

Q When you signed the Statement of Affairs, you had no idea whether the statement was true or not?

A. I have great confidence in the accountant.

Q Do you know, of your personal knowledge, that you had to pay Falcone Dairy Products?

A. No.

Q Have you had to pay out any money to Alburg Creamery?

A. I don't understand.

Q You said the Alburg Creamery was indebted to Falcone Dairy Products and they owed Alburg Creamery at the time of the bankruptcy?

A. Yes, that's right.

Q You would be indebted to Alburg Creamery and, in turn, become indebted to their creditors?

A. Yes.

Q Since the bankruptcy proceedings commenced, do you know whether Falcone Dairy Products has had to pay out money in behalf of Alburg Creamery for their creditors?

A. No, we couldn't. We were not in business.

Q Falcone was not in business?

A. No.

Q At the time Falcone was in business, who were the officers?

A. My brother and I.

Q Did you sign the Statement of Affairs as president?

A. No, as Vice President.

Q Was there a specific act that took place which, basically, bankrupted Alburg Creamery?

A. Yes, we had a fire.

Q Do you recall when that was?

A. July 13th.

Q Had you been up here to visit Alburg Creamery that day?

A. I was there the same day. I din't know about it until Monday.

Q Who were you here with?

A. Thomas Ocera. O-c-e-r-a.

Q During this time you were having to credit people for defective cheese, did you have dealings with any of the people returning the cheese?

A. Yes.

Q Did you receive a complaint from one of the large purchasers about rancid cheese?

A. They sent it back.

Q At that time, do you recall who the customers were?

A. They are in the ledger, who we sold it, and the credits and everything else.

Q And, these credits amounted to some $210,000?

A. Yes."

MR. O'NEILL. At which time, Mr. Falcone leaves the grand jury proceedings. The following is the grand jury testimony of Mr. Curreri.

"JOSEPH CURRERI, being duly sworn, testified as follows:

Examination by Mr. Reed.

Q Please state your name.

A. Joseph Curreri.

Q Before we do go any further, I will inform you that this is a grand jury investigation. This matter directly relates to Alburg Creamery and Falcone Dairy Products, Inc.

of Brooklyn, New York. It is a criminal investigation, and it is possible you may become a defendant. I am not saying that you will. I don't know where the investigation may go. Therefore, I will advise you of your rights. You have the right to remain silent. What you do say will be taken down and can be used against you in court proceedings. You have the right to counsel, but your attorney may not be in this room with you. You can consult with him outside the grand jury room. If you can't afford to hire counsel, counsel will be provided for you by the Court. You have the right to refuse to answer any questions I ask you if you feel the answer you give may tend to incriminate you. It is required that your testimony be truthful, and if you fail to tell the truth about a material fact, that constitutes the crime of perjury. Do you understand your rights?

A. Yes.

Q Do you desire an attorney, or counsel?

A. No.

Q Knowing what this is about, do you desire counsel?

A. No.

Q Mr. Currari, how are you employed?

A. I am a food broker for cheese.

Q Have you been involved in corporations owned by Falcone Brothers?

A. I have, in the past.

Q How long?

A. Thirteen years.

Q Are you now employed by Mr. Falcone?

A. No.

Q We are now focusing our attention on Alburg Creamery. What was your position?

A. I was Sales Manager and Office Manager for Falcone DAiry Products.

Q Would it be your duties to take orders?

A. I dispatched cheese. I would take orders and fill orders.

Q What was your position as to Alburg Creamery?

A. I had nothing to do with Alburg Creamery at all.

Q Did you keep the books as they related to the business of Falcone Dairy Products?

A. No. They had their own bookkeeper.

Q Relating to your duties with Falcone Dairy Products, would it be one of your duties to prepare the books?

A. I made no entries in the ledger. We had girls for that. I drew up some schedules as General Office Manager.

Q Is it true you drew up some statement that went into the bankruptcy proceedings?

A. No, I had nothing to do with that. No, I didn't.

Q Who did that?

A. The monthly accountant, Mr. Accardi.

Q As Office Manager, these people are responsible to you on what is entered in the book?

A. That's right.

Q I will show you Government's '1' for identification and ask you if you can identify that?

A. Yes, it is the General Ledger.

Q The General Ledger concerning what corporation?

A. June 1, 1972 to May 3, 1974 for Falcone Dairy Products, Inc.

Q May I have that back? I show you an entry in the ledger under January 31, 1974 date and ask you if you can recognize that entry?

A. What entry are you talking about now?

Q The first one on the page?

A. No, that is not my entry.

Q I understand you never entered anything in that ledger?

A. I drew up schedules of cheese sent to Falcone Dairy Products during a certain period of time, which was returned in a defective condition. We got a complaint back that the cheese was rancid and had a fishy smell, and there was a credit at that time on the books.

Q That entry there refers to July, 1971 to December, 1971. Is that the time period you remember you were getting complaints on rancid cheese?

A. Yes, mostly July to September; then they began to diminish off.

Q Did you take steps to rectify the rancid cheese?

A. No, I didn't; I am not a cheese maker. Ultimately, they found out why. I was told it came from the water from the lake, and that was rectified at a subsequent date. Whether they put in a well or not, it was rectified in time.

Q Whether they put in a well or not, it was rectified in time?

A. Yes.

Q Just notice that entry January 31, 1974, but the cheese was returned to you during 1971?

A. Yes.

Q Why wasn't it debited then?

A. Falcone Dairy was the sole owner. Alburg Creamery was regarded as all one corporation. They didn't feel it was important to make back-and-forth entries. There were two-fold reasons. Alburg Creamery was running in the red. Alburg Creamery had to have a cash flow to pay the farmers. If they were to charge Alburg Creamery, they couldn't take the credits for these complaints. Alburg Creamery wouldn't have the cash to pay bills. They felt these were way of bookkeeping. It was considered all one corporation. Had we known how to anticipate what was going to happen in the future, we had no way of knowing.

Q What do you mean by anticipating what was going to happen

in the future?

A. Alburg Creamery going bankrupt. This entry came about when we were here at the bankruptcy hearing out in the hall with the attorney, Mr. Wool. I said we never did charge Alburg Creamery for the bad cheese. Mr. Wool said you are entitled to take the credits. We went back to the accountant and he said we would take them, and we made up the schedule and, in reality, Falcone Dairy Products would have been the creditor to Alburg Creamery, and, in reality, the debtor was Alburg Creamery if credits were taken.

Q You mentioned not being able to pay suppliers. Were you able to pay suppliers during 1971?

A. I believe so.

Q Did there come a time a year or so after that you were not able to pay suppliers?

A. It was when Alburg Creamery went under.

Q Is it fair to say the Milton Coop. went under because of the milk they were supplying to Alburg Creamery?

A. Yes.

Q Did there come a time when there was an adjustment to Alburg Creamery of some $300,000?

A. No, I had nothing to do with Alburg.

Q I have here what I have had marked Government's "2" for identification, a Sales Ledger, and ask you if you can identify that, Mr. Curreri?

A. It is the Sales Journal of Falcone Dairy Products.

Q What date does it cover?

A. September, 1970 through February, 1974.

Q I will direct your attention to Page 79 there beginning July of 1971, is that correct?

A. Yes.

Q On that page there are blue entries and red entries. Would you explain the significance of them?

A. The blue entries are debits and the red entries are credits.

Q And, the red entries were credits you refer to for the return of bad cheese?

A. Yes.

Q Who were the major customers who led on cheese?

A. George White; Campagna Brothers just bought occasionally. A.C. Barr, Romeo, and if I remember correctly, Roman Products, Fiori Cheese, John Lindsay, Williams Food Products.

Q All right. Unless you can recall the rather large customers--I want some large customers.

A. Tony Fiori was one of the large customers, at that time.

Q I believe you testified earlier a well was dug?

A. I said I believe the well was dug. I know a well was dug; whether it was during that period of time, I don't know. I know a well was dug.

Q Do you have any records to ascertain this?

A. No.

Q You say Alburg Creamery was owned by Falcone Dairy Products?

A. Right.

Q You had a policy that Falcone Dairy Products kept their books and Alburg Creamery kept their own books?

A. We kept our books.

Q Were there books reflecting credits?

A. No. Falcone Dairy Products, to reiterate, believed to charge them at that time would be a waste of time because Alburg Creamery was running already in the red. To charge them and put them further in the red, Falcone Dairy couldn't take the credit because they needed the cash for payments to the farmers. They would have had no money to pay the farmers. They would go bankrupt immediately, and, subsequently, we would have become bankrupt because we needed a source of supply which, ultimately, came to pass.

Q Do you have any knowledge that anything took place that accentuated the bankruptcy of Alburg Creamery?

A. Well, actually, the first thing that started it was the fire at Alburg and, subsequently, the creditors. We were put in involuntary bankruptcy. I wasn't in any meeting on Alburg Creamery.

Q What was your involvement as to the bankruptcy proceedings?

A. Nothing. I attended just one creditors' meeting.

Q Who prepared the statement for the bankruptcy hearing?

A. Mr. Accardi.

Q Did he just do that on his own?

A. I prepared the schedules for him. I went through the Sales Journal and listed them as to credits and listed them in my journal.

Q Before I do that, you testified that partially it was your responsibility to deal with the customers; that is, taking orders and handling returns?

A. Yes.

Q During the period July, 1971 through December, 1971, is it your testimony, to the best of your knowledge, that everything marked as a debit here and marked in red in the Sales Ledger to your customers was, in fact, a return?

A. Some were returns. We were a very competitive business. We were having problems with cheese suddenly; continuous problems with cheese. Customers take advantage. We sent cheese to the customer to try to hold the customer and stay in business. We would extend credit just to hold goodwill of a customer, and I would say at least ninety per cent was returned.

Q Was that rancid cheese?

A. Yes.

Q Now, Mr. Curreri, I have been assuming all along and I am probably proven correct, that you are a competent manage-

ment accountant?

A. In this regard, I have just picked up accounting along the way.

Q Are you familiar with books and what they contain?

A. Yes.

Q I will show you a book; that is, Accounts Payable of Falcone Dairy Products?

A. Yes.

Q Which means you owe someone some money?

A. Yes.

Q I will show you this and ask you if you can identify the book?

A. Yes, it is the Accounts Payable.

Q Now, backtracking a little bit, you have identified Falcone Dairy Products' General Ledger for the time period June, 1972 through May, 1974?

A. Yes.

Q Now, is it a common bookkeeping procedure to post your transactions from almost all the other books into the General Ledger?

A. Yes.

Q And, the Accounts Payable, so-called, is a subsidiary ledger; what would you call it?

A. Accounts Payable Ledger.

Q The procedure would be, when in summary, would it be posted

to the General Ledger?

A. Yes, when the schedule is drawn up.

Q We have here the General Ledger. On January 31, 1974 there is an entry of $210,000. Now, on the page we have marked, is that, as you understand it, the closing out of payments to Alburg Creamery?

A. I didn't make the entry in the book.

Q From your experience, who would make the entry in the General Ledger?

A. It would have to be Mr. Accardi.

Q Do you see anywhere on that page the sum of $210,711.05?

A. No.

Q Wouldn't it be normal in closing out the Accounts Payable, wouldn't it be normal procedure to debit Falcone Dairy Products and credit Alburg Creamery?

A. I don't know how Mr. Accardi arrived at this. I would have to speak to him.

Q None of the entries were at your direction?

A. No, I just drew up the schedule. I don't know how he figured the transactions.

Q You do recall an entry that was in the amount of over $200,000?

A. Yes.

Q If you do have a schedule that is the amount in the schedule there, that amount?

A. Yes.

Q What is the total amount?

A. There is a zero balance here right now.

Q Did you ever see the Statement of Affairs in this matter?

A. No.

Q I believe you testified earlier that the $210,000 was an afterthought of correcting what was owing to Alburg Creamery?

A. It was a matter of taking the credits due at an after date.

Q Do you know if $210,000 makes it about equal with Alburg Creamery on this bankruptcy?

A. If I recall, the difference between Alburg Creamery and Falcone Dairy Products, Falcone Dairy Products owed Alburg Creamery some money.

Q Just referring to normal practices, Mr. Curreri, just referring to the last entries to Alburg Creamery, are they made with pencil or pen?

A. That are made in pen.

Q Are you talking about the entries?

A. The subentry is in pencil, but the sub-totals and actual entries are in ink."

MR. O'NEILL. That concludes the grand jury testimony of Mr. Curreri.

THE COURT. Anything further, Mr. O'Neill?

MR. O'NEILL. If I could have a moment, your

Honor. (Mr. O'Neill conferred with Mr. Cook) The Government rests, at this time.

THE COURT. All right, the Government rests, and, ladies and gentlemen, we'll take our evening recess at this time and resume tomorrow morning at 9:30. Please don't read anything about it, hear anything about it, or talk to anybody about it. We'll stand in recess until 9:30. I would like to see counsel in chambers.

(Government rested, and court recessed at 4:25 p.m.)

(February 11, 1976; 9:15 a.m.)

(In the courtroom without the jury)

THE COURT. Mr. Anolik.

MR. ANOLIK. Yes, your Honor. Your Honor, at this time, I am going to ask for a dismissal under the rules, your Honor, on the grounds that the Government has failed to make any case. We submit, your Honor, that the evidence adduced at this trial does not come up even to the minimum standards required under the statutes, and certainly under United States v Taylor which I cited to you in the papers which I submitted to you yesterday, your Honor, that would warrant this case in even going to the jury. The evidence which was adduced, your Honor, at the most shows that an accountant working for the Government happens to be an F.B.I. agent, completely confused the thrust of certain entries. There was not only disclosure,

check any of those packages against these invoices?

A. Yes; there were lot numbers and it was checked.

Q Those are the cheeses that smelled, isn't that true?

A. That is right.

MR. ANOLIK. No further questions.

MR. O'NEILL. Nothing further, your Honor.

THE COURT. All right, Mrs. Fried, you may step down.

(Mrs. Fried left the courtroom)

MR. ANOLIK. May I have a minute, your Honor? I want to see if a witness arrived.

THE COURT. Very well.

MR. MURDOCH. Your Honor, Mr. Abare has just handed me a list.

(A new witness entered the courtroom)

GARY KEITH MICHAEL, Sworn

DIRECT EXAMINATION

Q (By Mr. Anolik) Would you please talk into the mike and give the jury and his Honor your full name?

A. My name is Gary Keith Michael.

Q And, Mr. Michael, what is your profession?

A. I am a Certified Public Accountant, and I am an Associate Professor of Accountancy at the University of Vermont.

Q Can you tell me what your educational background is?

A. Yes, sir. In 1959, I graduated from the Michigan State University with a Bachelor of Arts Degree, majoring in accounting, and in 1960, I completed an additional year for a Masters of Business Administration, again, majoring in accounting.

Q Can you tell me whether you ever held a job with the United States?

A. Yes, during the period, the time period 1960 to 1965, I was a supervisor accountant for the United States General Accounting Office. That is an arm of Congress.

Q In Washington, D.C.?

A. Yes, Washington, D.C., sir.

Q And, you have been teaching at the University of Vermont since when?

A. In 1965, I completed a requirement for a C.P.A.. I then came to the University of Vermont as an Assistant Professor. I am now an Associate Professor of Accounting. I have been teaching eleven years.

Q Do you teach all different courses in accounting?

A. Yes, sir.

Q Would you just tell the jury what it means to obtain a certificate as a Certified Public Accountant?

A. To become a Certified Public Accountant, an individual has to take a uniform examination.

Q Is that nationwide?

A. It is a nationwide examination in each of the states. The same examination is given at the same time. It is given, routinely, the first week of May and the first week of November each year, a different examination. Most recently, I believe, about 50,000 people sat through the examination and 5,000 passed. It is a very low passing rate; it is over three days, Wednesday, Thursday, Friday; with examinations, part in accounting theory, accounting practice, auditing and law, commercial law. Once I passed the examination in the State of Virginia, I needed to complete an experience requirement, and in Virginia, at the time, I needed five years work experience. Other states have different time periods. When I completed the examination in Virginia, I was able to get reciprocity in Vermont, since it is a nationwide examination.

Q Now, Mr. Michael, you have had occasion to examine the books and records of Falcone Dairy, have you not?

A. Yes, I looked at the books, yes, sir, yesterday.

MR. ANOLIK. Now, your Honor, may I borrow an exhibit of the Government?

THE COURT. If it is in evidence, you don't have to borrow it. You may refer to it any time you wish. Turn it over, though.

Q (By Mr. Anolik) I show you Government's Exhibit "72,"--this is a blow-up of a particular page. Can you see it

all right, Mr. Michael?

A. My eyesight is not the greatest. Yes, thank you.

Q You notice there is an entry for two hundred ten some odd thousand dollars down at the bottom?

A. Yes. Looks like a debit to accounts receivable and a credit to purchases. I think accounts payable for $210,711, yes.

Q Do you recall you were specifically asked to look at the books with respect to that entry?

A. Yes, I was.

Q Now that entry, as you were told, is it not so, was a credit which Falcone Dairy took in 1974 for entries which they had made in their books in 1971, but did not take credit for in 1971, do you recall that?

A. Yes, the entries made in 1971 were for cancellation of sales and 1974 was cancellation of the purchase year.

Q Explain to the jury what the accounting aspects of that is.

A. Right. The accounting aspects, as I see it from the record in the year of sale, customers bought the product and for various reasons, they returned the product, and the debt of the customer to the company was cancelled. Normally, then, you cancel the purchase; the cancelling of the purchase was made in 1974. So this means in 1974 the liability to the buyer was eliminated.

Q In other words, that would be Alburg Creamery?

A. Alburg Creamery?

Q Yes, the bill to Alburg Creamery was cancelled in 1974?

A. Yes, sir.

Q Can you tell us, from your experience and your expertise, is there anything improper about that accounting method?

A. I see nothing improper in that method. I duly feel it should be in the same year, but to do it upon recognition, or finding of the omission, is perfectly proper.

Q Did you also look at the books and records to see whether there was full disclosure of what had been done?

A. Yes, I did.

Q Was there full disclosure?

A. Yes, there was.

Q Isn't it a fact that actually full disclosure is the first important thing in accounting?

A. That is one of the basic principles of accounting, yes.

Q You were also asked to render an opinion with respect to an item of three hundred some odd thousand dollars for unrealized appreciation?

A. Yes.

Q Would you explain that to the jury?

A. The entry that I saw that you are referring to, was an increase in the account called "investment in Alburg" or "investment in the Alburg operation," and also an increase to an account called "unrealized capital from the General

Journal". There were extensive notes explaining the transaction and on a typed financial statement, which included this transaction there were also extensive notes explaining it. As I see it, this was an entry that was made in regard to obtaining loans, and it was to increase the actual cost investment which was in the area of $58,000 up to an appraised value, a market value, of $360,000. It was put on the books at the time of the negotiation for the loan. At the time the loan did not come through, it was properly reversed. This type of entry, I have seen in a number of other situations where you attempt to move from cost to market. There is quite a problem in accounting today, with inflation, and the American Institute of Certified Public Accountants is now working on the problem, perhaps formulizing the moving up of cost values to replacement costs in today's dollars. It is called, price level accounting.

Q But the entries there were not improper entries, were they?

A. In my opinion, the entries are not improper since there is full disclosure, and it is possible to trace where the original cost is.

Q Was it not a fact that the base price was restored after the loan did not go through?

A. Yes. The entry increasing the investment, the asset account, and increasing the equity account, was reversed,

so the fact, after the entry was put on the books, another entry was made to take it away, and we are back to the original cost.

Q Nothing improper about that?

A. In my opinion, no.

Q And, there was full disclosure, isn't that so?

A. Yes. There are a number of notes in here that explain that.

Q Now, for example, if a person was seeking a loan, let's say, from a bank and he had 100 shares of American Telephone stock which he had purchased at least say, for $10,000, but in the present market it was worth $20,000 market value, he would have a perfect right to tell the bank, "Now look, it is true I only paid $10,000 for it, but on today's market it is worth $20,000. Won't you lend us $15,000?" That would not be an unreasonable picture to paint, would it?

A. No; in fact, it is quite typical for bankers to ask what the market value of the collateral is.

Q If the loan doesn't go through, you would have to return to your base at the purchase price, which was $10,000?

A. Yes.

Q And, if you put it at $15,000, the market value, let's say, you would be giving the improper base, isn't that true?

A. Would you rephrase that?

Q If you change the base.

A. Yes, if you were to change the base on your books to $15,000 it would be. However, with the recognition of the disclosure of them, you are perfectly all right. The fifteen is a market value in your illustration which is used for collateral purposes; at the time that stock goes up, everybody sold. You must, of course, come back to the base for capital gains.

Q So, in other words, your base against the selling price is always your capital gain, is that correct?

A. That is right.

Q A capital gain is realized on sale?

A. That is correct.

Q Not at the end of the accounting period?

A. No, at the end of the sale. You must complete the transaction by physically selling it. A merging of an item is not a sale.

Q And, an offer to obtain a loan is not a sale, is it?

A. That is correct.

MR. ANGLIN. No further questions.

CROSS EXAMINATION

Q (By Mr. O'Neill) Mr. Michael, when an entry is made, when a decision is made to make an entry, let's say, two years later, it is possible to make a deferred entry, is it not?

A. Yes, it is possible.

Q When one makes a deferred entry, their normal practice is to make that deferred entry in the book, is it not?

A. Well, will you define "deferred entry"?

Q I will have you define it so we make sure we are using the correct term.

MR. ANOLIK. I object to that. It has to be responsive to a question.

MR. O'NEILL. I will ask him the question, if you give me a minute.

Q (By Mr. O'Neill) Mr. Michael, is it a practice in the accounting profession, from time-to-time, not to make an entry at the first available opportunity?

A. The practice is when you have the knowledge of a transaction, it is normal to record it.

Q So, normally, if the credit for the $210,000 worth of cheese credits were known in 1971, it should have been taken in 1971?

A. I would say at the point that the accountant is aware of it, it should be recorded.

Q As soon as he is made aware of it, that entry should be made?

A. That is correct.

Q Is there also a proper procedure whereby a decision may be made not to make the entry and some notation can be made?

A. No. Generally, I think, what you are asking, it is not

at all normal to know of something and make a notation that I will record this in five years.

Q So if it was known by the accountant, the accountant should record it in the year known?

A. If the accountant is aware of it. Occasionally, accountants do not have all the information that management has.

Q If the accountant knows, he should make the entry?

A. Yes, he should.

Q With respect to this $210,000 credit you have no way, yourself, of knowing whether or not the Falcone Dairy was entitled to take that credit, do you?

A. Well, from the information given to me were the accounts receivable from when they sold it, being cancelled, I would say, yes, they would be entitled to take it.

Q You have no way of knowing whether or not the cheese was bad in 1971?

A. I have no knowledge as to the product or the transactions behind it.

Q In other words, all you are doing is taking the red entry and if you say the red entries are for credits, you say they can take the credits?

A. Yes, it is perfectly normal. If you buy a product that is not saleable, by you, then the person you buy it from is responsible to restore you for the amount of money you paid

them.

Q That is a standard business practice?

A. Yes, it is. So, therefore, I would say, they are--they would be entitled to it.

Q Normally, when the return is made, the return is made and the credit recorded in the books?

A. That is the preferred method, yes.

Q You examined the Falcone Dairy Products' Sales Journal?

A. Yes, I saw the Sales Journal.

Q You saw the red entries?

A. Yes.

Q From looking at those red entries, there is no way of knowing what those are, other than those are credits of some type?

A. I know they are reductions of an accounts receivable.

Q But other than being reductions in the accounts receivable, you have no way of knowing whether they are returns, discounts, price adjustments, or anything of that sort?

A. No. However, I believe on the individual invoices supporting the entries, there are notations, and if I were to examine the individual invoices, I suspect many of them would be identifiable that way. Personally, I have no direct knowledge.

Q The only way you might be able to tell us is by looking at the invoices?

A. That is correct:, that is, if they were all there.

Q If you had all the invoices and the invoices so reflected?

A. Yes.

Q Let me show you this package of invoices here marked Defendants' Exhibit "G", just looking at the top entry, assuming for purposes of my question, are there a corresponding red entry and if the invoice goes with it? Can you tell from looking at that what the credit is for? Just for the record, this is Number 00323 at the bottom of the page.

A. All right, the number of pounds of cheese is indicated; the entire price is indicated with a total dollar amount extended, and there is a word I am unable to read, but, in other words, credit correction 57, this could be a price correction. I don't know. It could be for other purposes. I would have to rely on other evidence.

Q Mr. Michael, let me show you 00324 and ask if you can tell what the credit is for?

A. This indicates credit for all entries from the ledger at 45,266.62. I would have to go back to the ledger and pick up all the entries preceding that which came to that figure, but still physically on this sheet of paper, it does not say what caused the credit.

Q You can't tell from this whether it is a discount, a return, or what. It is just based on this document?

A. Based on that one document alone, I cannot tell what was the cause.

Q Let me give you the third one--00325--can you tell from this particular invoice what the credit is for?

A. No. Similar to the other ones, we do not have an item marked on here as to what it was for. I suspect that the accountant at the time would also not know, and perhaps that is the reason why the error was not discovered for two years.

Q Let me show you Number 00652. What does that invoice indicate for purposes of the credit?

A. This says to correct Bill Number 00361. I would presume this is pricing.

Q Or an error in the price?

A. Error in price; perhaps the quantity, perhaps it could be the quality. I cannot tell from this.

Q Some mistake, apparently, in the bill as originally rendered?

MR. ANOLIK. He did not say that. He said it could be quality.

A. It is a supposition on my part.

Q (By Mr. O'Neill) You don't know what it is for?

A. No.

MR. O'NEILL. May I have just a moment, your Honor? There are a series in here I am looking for.

THE COURT. We'll take our morning recess at this time.

(Court recessed from 10:45 - 11:03 a.m.)

GARY KEITH MICHAEL resumed the stand for further cross examination.

THE COURT. Proceed, Mr. O'Neill.

Q (By Mr. O'Neill) Mr. Michael, if any entries in the books were omitted--in other words, if a document came in such as an invoice or something of this nature and not recorded in the books, there is no way for you to tell, if it is not recorded?

A. That is correct.

Q In other words, you, yourself, have no personal knowledge of the books other than the review you were asked to make a day or two ago?

MR. ANOLIK. Iobject. There is no evidence anything was left out of the books.

A. That is right.

Q (By Mr. O'Neill) Your knowledge of these books is limited to a review of the books a day or two ago upstairs, is that correct?

A. That is correct.

Q Mr. Michael, with respect to the entry for unrealized appreciation, I take it---

A. You say, "depreciation"?

Q I think I said "appreciation"; referring to the approximately $210,000 entry for unrealized appreciation, I take it that appreciation, realized or unrealized, can only be recorded only, in fact, if there has been an appreciation, is that right?

A. Yes.

Q In other words, if A.T.&T. stock was bought at ten, and you list appreciation of twenty, when it only went to fifteen, that, obviously, is improper?

A. That is correct.

Q Mr. Michael, I show you Government's Exhibit "74", the Financial Statement you had in front of you earlier. Going to what is actually the third page, entitled "Notes to Financial Statement," Paragraph 2, this indicates that the value of Alburg Creamery as determined by the officers, is that right?

A. That is what the words say, yes.

Q In other words, the accountant, himself, at the time did not make any computation as to the value of Alburg Creamery, or obtain papers or anything of this nature on appraisals?

A. According to Paragraph 2, that is correct. Normally, accountants would not independently come up with that value.

Q At any rate, the valuation was obtained by the officers themselves, apparently, according to this?

A. According to this, yes.

Q And, the land valuation in Paragraph 3, the same thing may be said for that, is that right?

A. It says, "Land owned by the three stockholders of 365 acres valued at $1,000". It doesn't say who made the appraisal, but I assume it would be the same.

Q Down here in Paragraph Four, this paragraph would indicate that the "$290,000 in COF Realty was subject to consummation of legal transfer which is in process, per attorney," is that right?

A. Are you asking if that is what it says?

Q Yes.

A. Yes.

Q With words in between?

A. The paragraph says, "Investment of $290,000 in COF Realty, Inc. which is currently owned 40 per cent by the stockholders was derived as follows by the officers: Market value of realty, $1,125,000; 40 per cent interest, $450,000," and then there is an Item B, "Mortgage on Realty, 400,000; 40 per cent interest, 160,000; net interest of stockholders, 290,000. Net interest was transferred to Falcone Dairy Products, Inc., subject to consummation of legal transfer which is in process, per attorney". I read this as being an intention to transfer an asset to the company, but legal title has not passed.

Q So, in other words, this paragraph would indicate that that

particular entry, within the Financial Statement, causes the assumption this transfer will take place?

A. Yes.

Q It is disclosed, however?

A. Yes, it was disclosed.

Q Mr. Michael, I take it with respect to shares of stock which are commonly traded, for example, AT&T, the example that has been used, if you were asked to note the appreciation for AT&T, you could simply call the Wall Street Journal, or some other reputable market reporting service, and on that basis come up with an acceptable figure, obviously, as to what the specific value was?

A. Yes. The Wall Street Journal is an excellent source for that type of thing.

Q That is a recognized authority?

A. It is a recognized authority. You don't need to get an appraiser to appraise the shares of AT&T, and in the case of commonly treated stock, there is a market.

Q So, it is easy to obtain the value?

A. Yes.

MR. O'NEILL. That is all we have, your Honor.

REDIRECT EXAMINATION

Q (By Mr. Anolik) Mr. Michael, Mr. Michael, I believe you know that Falcone Dairy was not a public corporation?

A. Yes.

Q You do not see their stock publicized in the Wall Street Journal?

A. They would not qualify, I would say.

Q With respect to the statement, Exhibit "74", that would be, would it not, in the nature of an internal statement, isn't that true?

A. Yes, and also marked "unaudited".

Q Under what circumstances might an accountant do that in contrast to a certified statement?

A. The only time you would give a certified statement is if you actually had gone through a formal audit, an examination of all of the accounts and confirmation with outsiders, bank reconciliations, et cetera. Unaudited statement is directly taken from the records with appropriate disclosure notes.

Q Which are contained here?

A. Which are contained in this one.

Q And, Mr. Michael, having reviewed all the records which you had, I just want to ask again, the entry of $210,000, approximately, give or take a few extra dollars, is it your opinion that it was a proper entry?

A. In my opinion, the entry was proper.

Q And, the entry with respect to unrealized appreciation, that was also a proper entry?

A. Yes, with the disclosure that accompanied it.

Q And, in all cases, is it not a fact that you were able to find proper disclosure?

A. Yes. In the journals there were notes and in the statement.

MR. ANOLIK. No further questions of this witness.

RECROSS EXAMINATION

Q (By Mr. O'Neill) Mr. Michael, you couldn't verify yourself as to the correctness of those red entries, could you?

A. No, I did not credit them, but no, I did not audit them.

Q In other words, in giving your answer with respect to the $210,000, you are posing the assumption that the red entries are proper and that Falcone Dairy Products, in fact, had those credits which they could take?

A. Yes, I am making an assumption the underlying support is there.

Q The same thing might be said with the $301,000 entry for appreciation. You are assuming it is true because the property had appreciated from the purchase and was legitimate in making that entry?

A. What I am saying is that the accountant's entries are proper to debit and credit appropriate accounts. When it comes to valuation, this is another story.

Q You are not claiming knowledge as to whether or not those credits, in fact, existed or the land appreciated that much?

A. No, I have no knowledge.

REDIRECT EXAMINATION

Q (By Mr. Anolik) By the way, I show you Exhibit "41". Is this a certified statement? (Handed to the witness)

A. This is Alburg Creamery, Inc., P.F. Jurgs Company, the Balance Sheet of Alburg Creamery, Inc. as of March 31, 1973 and the related statement of Alburg Creamery, Inc. financial position for the period ended were not audited by us, and accordingly we do not express an opinion. No, this is not an opinion report.

Q In other words, and we have a number of these--you have looked these over before?

A. Yes, I have looked through the Jurgs reports; none of them are audited reports.

Q Let me ask you this. Whenever you examine books and records of anybody, be it Falcone Dairy or anybody in the world, you have no personal knowledge whether or not the entries in red or black are true or false. You have to assume the truth of them, isn't that so?

A. Examining and not auditing, yes.

Q You weren't present to determine whether this was foul cheese or not, you weren't asked about this cheese, isn't that true?

A. That is correct.

Q The entries were proper, isn't that so?

A. The accounting entries are proper.

Q Nobody in this jury was present at the time of the entries, isn't that correct, as far as you know?

A. As far as I know.

Q Now, we have had testimony here from bookkeepers that they put the entries on the books. We have testimony from a bookkeeper, a Toby Lustig, that so far as she knew, no discounts were ever given price-wise. Now when you see books and records of a company that are kept by bookkeepers, exclusively, not by management, the entries made only by bookkeepers and the consolidated statement made by a certified public accountant, don't you have a right to assume they are accurate entries?

A. I would make that assumption.

Q Just in conclusion, you see nothing, accounting-wise, improper in the entries that you were asked about, the $210,000?

A. Accounting-wise, I see nothing improper.

Q And, there was completely full disclosure?

A. I see full disclosure.

MR. ANOLIK. Nothing further.

RECROSS EXAMINATION

Q (By Mr. O'Neill) Once again, Mr. Michael, you are taking the books as accurate, whether or not they were recorded in the course of business, is that right?

A. That is right. I am not performing an audit on these books.

Q And, the only way you would be able to personally certify the correctness of the books is for you to go and conduct an internal examination that results in a certification?

A. If I were to audit the books, I would have to look in detail all underlying documentation and examine all the entries to verify that they are, in fact, appropriate, and then I would give an opinion, an independent opinion on them from the viewpoint I have been asked, based on the information that is there, is it appropriate to make these accounting entries, and to that extent, yes, they are appropriate entries.

Q Mr. Michael, you have a Masters in Business Administration, do you not?

A. I do, from Michigan State University, sir.

Q Is it good business practice to withhold an entry such as that $210,000 for two years?

A. I would say it is not normal to do it. I don't know whether I can say it is good practice or bad practice.

MR. O'NEILL. That is all we have.

REDIRECT EXAMINATION

Q (By Mr. Anolik) But, it is not improper to do is, is that correct?

A. I don't know. Let me phrase between management and

accountants. Once an accountant is aware of a transaction, the transaction should be recorded. It is up to management to communicate the information.

Q These entries were on the books in 1971?

A. Yes.

Q The accountant was able to see them, isn't that true?

A. Yes.

MR. O'NEILL. Excuse me, your Honor, I object to what it is that the accountant could see.

Q (By Mr. Anolik) You would assume accountants could see them?

A. Yes, I would make that assumption.

MR. ANOLIK. Nothing further.

MR. O'NEILL. Nothing further, your Honor.

THE COURT. All right, Mr. Michael, thank you.

MR. MICHAEL. Thank you.

(Mr. Michael left the courtroom and a new witness entered)

PHILIP FALIVENE, Sworn

DIRECT EXAMINATION

Q (By Mr. Anolik) Mr. Falivene, give us your full name for the record.

A. Philip Falivene.

Q Mr. Falivene, were you ever questioned by the Government?

A. No.

Q Let me ask you, let's assume that a customer was dissatisfied with cheese because of the foul odor, or something of that sort. If he said, "Well, I will try to sell it, but you will have to give me a lower price," might you do that?

A. I sure would.

Q That would be like salvaging cheese?

A. I would give a special price, if they would keep it, yes.

Q Did that ever happen?

A. Through the years, it happened, yes, a few times.

Q Now, let's assume that cheese can be salvaged to some extent. How could it be salvaged, let's say, if the elasticity is destroyed? What can you do with it?

A. If the cheese has no odor, or rancid taste, it is just a question of its losing the strength, what we do is cut it up, brine it, dry it and grate it.

Q Would that impose additional labor costs on you?

A. We take a beating on it, surely, because the moisture is, say, 48 and we bring it down to 20, so we lose fifty per cent through the moisture of the product, and the labor factor, so we wouldn't get very much out of it.

Q But, if it has a foul odor, can you do that?

A. No, sir, you can't.

Q If it has a foul odor, is it a total loss?

A. Yes, sir.

Q Now, Mr. Falcone, when you were dealing with Alburg Creamery, on occasions you went up to Alburg, did you not?

A. Yes.

Q But you were not there like Mr. Falivene all the time?

A. Continuously, no.

Q Only Mr. Falivene was there, isn't ~~that~~ so?

A. In 1971?

Q Yes.

A. Yes, sir, he was there most of the time.

Q If you came up, it was for an occasional visit, is that correct?

A. I came up if they had any problems. I would be up there, occasionally.

Q Now, during the years that you were dealing with Alburg Creamery, were you a good customer of Alburg's?

A. Yes, sir, I was.

Q What percentage of its production, in 1971, 1972 and part of 1973 would you say you took, if you know?

A. I couldn't give you an exact figure.

Q Would it be a substantial amount?

A. Possibly, yes, sir.

Q In other words, what I am trying to get at is this, did you rely on Alburg Creamery, to a large extent, to supply you with its product?

A. Yes, sir.

Q Now, if you had taken the $210,000 credit in 1971, would that have had an affect upon Alburg Creamery's existence?

A. It would surely have hurt them.

Q It would have hurt them?

A. Yes.

Q In 1973, Alburg Creamery burned, is that correct?

A. Yes.

Q What affect did that have on Falcone Dairy?

A. Knocked us right out of the box.

Q Knocked you out of business?

A. Yes, almost.

Q You had been losing money in 1972, is that correct?

A. Yes, we had, through their yield and through other problems we had.

Q Much competition and so forth?

A. Yes.

Q In 1973, about October or thereabouts, after the plant had burned down already, did you have any conversations with Joseph Wool who was your attorney at that time?

A. 1973. That was during the bankruptcy?

Q Before the bankruptcy. October, 1974.

A. Yes, we did; after the fire, yes.

Q And, I show you Exhibit "H" in evidence, which is that letter that Mr. Wool wrote several people, offering to pay off one

hundred cents on the dollar. Did you have a conversation with Mr. Wool concerning that, after?

A. Yes, I did.

Q And, with your experience in the cheese business, did you, in good faith, believe that you could rebuild and, in fact, pay out one hundred cents on the dollar if given the chance?

A. My answer to Mr. Wool was that he thought that the money from the insurance company would pay about forty per cent of the obligations, and I instructed him to give them this forty per cent, whatever their total was at the time. HE was negotiating with the Federal S.B.A.

Q Small Business Administration?

A. Yes and State of Vermont, Chittenden Bank--I believe it was equipment and so forth--trying to get the plant rebuilt and I got assistance from the town also. They wanted us back there to get the plant operating again.

Q Did you believe, if you were given the chance to rebuild, you would?

A. Yes, sir. I was going to come up here before the fire. I was ready to move up there myself to get the problem straightened out, and the yield, and so forth.

Q What would you have done, under that plan, to reorganize this operation of the plant?

A. I submitted a--I believe it was a proposal or some kind of project to the bank, explaining what products we were to

make. We were to make new products, if I can remember now.

Q Just relax.

A. A project showing the figures, employment, how many people we intended to employ, and percentage of profit on these items.

Q In your judgment, did you feel that you could rebuild and pay off the creditors?

A. I believed so, yes, sir.

Q You believed that, in good faith?

A. I did.

Q Now, Mr. Falcone, at any time, did you attempt in any way, shape or form to hide anything from the creditors?

A. No, sir.

Q Did you, in any way, shape or form, attempt to keep information from the creditors?

A. No, sir.

Q Did you, knowingly or willfully, sign anything that was false?

A. Not to my knowledge, no, sir.

Q As a matter of fact, when you spoke to your attorney, did you tell him everything that you knew about the situation?

A. I sure did.

Q You didn't keep any information back from him, did you?

A. No.

Q Did you have a conversation with Mr. Wool concerning the

credit of $210,000 that was finally taken in 1974, January of 1974?

A. Conversation about the legality, you mean?

Q Yes.

A. Yes, I did.

Q What was his advice to you, at that time?

A. He said it is perfectly legal.

Q And, you relied upon that advice?

A. Yes, sir.

Q Did you tell that to your accountant?

A. I told Mr. Curreri to check with the accountant.

Q Now, what was Mr. Curreri's function in the Falcone Dairy?

A. He was in charge of the office personnel.

Q Is he an owner of the dairy?

A. No, sir.

Q He is just a worker, isn't that true?

A. Yes.

Q Mr. Curreri was in the office most of the time, is that correct?

A. Yes, sir.

Q Did he also do any outside sales?

A. Some times, not too much; mostly, in the office.

Q Now when you testified before the grand jury and when you gave information to the F.B.I. agents, did you give them that information to the best of your ability?

A. Yes, sir.

Q Did you attempt to withhold anything from them?

A. No, sir.

Q Now, Mr. Falcone, did you try to prevent the bankruptcy of Alburg Creamery?

A. Yes, I did.

Q You were put into involuntary bankrupty, is that correct?

A. Yes, sir.

Q Did you ask to be put into bankruptcy?

A. No, sir, I tried to prevent it.

Q Now, when was the last time, Mr. Falcone, that you saw Mr. Laramee at the Alburg Creamery prior to the fire, if you remember?

A. I don't remember, I can't say. Probably a month or two or three before he resigned, probably.

Q Would it be fair to say you saw him at regular intervals?

A. Yes, three or four weeks. Some times, I would be there all week.

Q How would you describe him as a cheesemaker?

A. Fair. He is fair, on mozzarella cheese.

Q On mozzarella cheese?

A. Yes.

Q He is better in some other cheeses?

A. Yes.

Q Which cheese?

A. Greek feta cheese. He makes an excellent Greek feta.

Q Does mozzarella have some problems that are not encountered in Greek feta cheese?

A. Yes, definitely.

Q You have had a number of conversations, have you not, with me and Mr. Murdoch, my associate counsel?

A. Yes.

Q And, you were told, were you not, that you did not have to testify in this trial if you did not want to?

A. Yes.

Q And, you said you did want to testify, isn't that true?

A. Yes, sir.

Q Everything that you have said here today, is it the truth?

A. To my knowledge.

MR. ANOLIK. I have nothing further.

CROSS EXAMINATION

Q (By Mr. O'Neill) Mr. Falcone, isn't mozzarella one of the easiest cheeses to make?

A. No, sir.

Q It isn't easier to make than feta?

A. No, sir.

Q You don't think it is the easiest cheese to make?

A. It is not the easiest one to make.

Q One of the easiest cheeses to make?

A. No, sir, it isn't.

Q Based on your testimony, it is more difficult?

A. In the sense you can have too many things going wrong with the cheese.

Q What type of business are you in, at the present time?

A. I am unemployed.

Q Do you own any businesses?

A. No, sir.

Q Do you own any shares of stock, if any?

A. Yes, I do.

Q What is that in?

A. COF Realty, yes.

Q What about Falcone Foods?

A. No, sir.

Q Are you familiar with that institution?

A. I am familiar with the name, yes, sir.

Q Who owns that?

MR. ANOLIK. Objection; irrelevant and immaterial.

THE COURT. What do you claim?

MR. O'NEILL. I believe we'll show it is one of the family corporations and moves from one to the next.

THE COURT. How is that relevant?

MR. O'NEILL. I will go back to it and withdraw the question at the present time.

Q (By Mr. O'Neill) Mr. Falcone, you were associated during

the period in time with Falcone Dairy Products?

A. Yes, sir.

Q You were also associated with Lido Cheese Company?

A. Lido Cheese Company, I bought for my son when he left school.

Q Did you have any role in the Lido Cheese Company?

A. I was an authorized signature.

Q You signed the checks, right?

A. I believe I signed most of their checks.

Q What about United Cheese Company?

A. United Cheese Company, I am not an officer.

Q What is your relationship?

A. I was a consultant. I would go around and teach people how to make it clear from poor supply.

Q United Cheese Company took over the same physical location you had in Brooklyn?

A. Yes.

Q Prior to that, it was Lido Cheese at that location?

A. Yes, sir.

Q Prior to that, it was Falcone Dairy Products at the location?

A. Yes.

Q And, Falcone Food Products was also at that location, is that right?

A. Yes. I believe that Falcone Foods might have been on

Corbett Court. I am not sure if it was on Corbett Court.

Q Now, just to make sure we are talking about the same Falcone Food Products, where was that office located?

A. 27 Corbett Court, I believe, or in the area surrounding there.

Q This is a corporation run by your son, Joseph Falcone, is that right?

A. No, sir.

Q Who runs Falcone Food Products?

A. I believe Mr. Churchill was President; Charley Churchill.

Q Did you have an ownership or interest in that?

A. No, sir.

Q Did you have anything to do with managing it?

A. No, sir.

Q You had no role in that at all?

A. No.

Q What is the current status of Falcone Dairy Products?

A. We ceased to do business a few years ago.

Q And, what about the Lido Cheese Company?

A. Lido Cheese Company, I said before, my son left school in May of 1972, and I bought a route for him--a retail route--which he ran, and then his older brother also had a retail route, and they merged in October of 1972, I believe.

Q What happened to Lido Cheese Company?

A. I believe they are in business.

Q Still in business at the present time?

A. Yes. My son resigned two years later.

Q But neither you, or any member of your family, are presently associated with it?

A. My sons, you mean?

Q Yes.

A. No, sir, they aren't.

Q Now at the time the Falcone Dairy Products ceased business, what was its financial statement when it ceased business?

A. Well, the Bankers Trust called in their accounts receivable, and we couldn't work.

Q You also owed a lot of money to other creditors?

A. Yes.

Q You owed a lot to Milton Coop., for example?

A. Yes, sir.

Q About $300,000 to Milton Coop.?

A. I don't know the figure, but we owed some money.

Q Now, Mr. Falcone, in early 1973, what was your personal financial situation? I don't mean in terms of what you had for assets, unless you want to go into that. Were you in need of money at that time, particularly?

A. In 1973?

Q Yes.

A. Well, I don't remember the date, but we have been nego-

tiating all over the place.

Q You needed money at that point?

A. Yes, sir, we did.

Q And, during this period of time, which businesses were you associated with yourself, in 1973?

A. Falcone Dairy.

Q Just Falcone Dairy?

A. To borrow money, yes, sir.

Q Were you associated in 1973 with any businesses besides Falcone Dairy Products?

MR. ANOLIK. I object to this. It is immaterial.

THE COURT. No, I think this is material.

A. In what sense, in 1973?

Q (By Mr. O'Neill) In 1973, did you own any businesses you were working for? Were you working for any businesses, consulting for any businesses? What was your source of income during that period of time?

A. I was working for Falcone Dairy.

Q You were working for Falcone?

A. I believe so.

Q Falcone was already broke, weren't they?

A. I got paid from Falcone, if that is what you mean.

Q Falcone was the only firm you were getting any money from, at that time?

A. To the best of my recollection, yes, sir.

Q Any income you got, you got from Falcone?

A. I believe so.

Q Falcone was in financial trouble, is that right?

A. Yes.

Q So when Falcone went out of business, that was a personal loss to you? You lost your job, isn't that right?

A. More-or-less, yes.

Q You were one of the owners, but, nevertheless, you lost your job when Falcone went out of business?

A. I know we cut our salary down. Yes, I believe so.

Q Mr. Falcone, when it went out of business, you no longer got a salary from Falcone?

A. After it went out, no.

Q Now, you were trying to get loans during that period of time, is that right?

A. Well, I was trying to.

Q In 1973?

A. In 1973, yes.

Q Specifically, did you mortgage some property in July and October of that year down here in Richmond to get money?

A. Well, we mortgaged our property, and we gave, I believe, some monies to the bank, Bankers Trust, yes.

Q You mortgaged some property you owned up here in order to get money?

A. Yes.

Q You needed money to keep going, at that point?

A. Well, I borrowed money. I don't know if it was too late or not to help the situation. We did borrow some money.

Q Mr. Falcone, you needed money, is that a fair statement?

A. Surely.

Q Now in that connection, I show you Government's Exhibit "74", this financial statement. (Handed to the witness) This was prepared to help you get some loans, is that right?

A. This statement is loans---

Q This statement was prepared with the intent of assisting you in getting loans; you were going to use this in getting loans?

A. I used some statement. I don't know if this is the one or not.

Q You used some statement?

A. Yes.

Q Does this look like the statement here?

A. All statements look alike. Point it out to me.

Q In other words, you are not agreeing to the numbers in it, but this could be it?

A. It could be this statement, or any other statement, yes.

Q Up here under the second paragraph, within Paragraph 2, on the page entitled "Notes to Financial Statement," where

it says here, "The value of Alburg Creamery, Inc. was determined by the officers to have a market value of $360,000," you provided Mr. Accardi with that figure?

A. Most likely, yes.

Q In other words, Mr. Accardi didn't make up that figure on his own, you gave him a figure to use?

A. My brother and I, probably, yes.

Q You came up with a figure for him?

A. Yes.

Q Going down here to Paragraph 3, "Land owned by the three stockholders of 365 acres in Vermont was valued at $1,000 per acre for a total of $365,000," I take it Mr. Accardi didn't do that evaluation?

A. No, sir.

Q You and your brothers did the evaluation?

A. Yes.

Q And, you valued that 365 acres at $365,000, is that right?

A. Yes, sir.

Q Now, isn't it a fact that land at that point in time was assessed for tax purposes at $11,000?

MR. ANOLIK. I object, your Honor.

MR. FALCONE. I don't know. I have no idea, your Honor.

THE COURT. We'll let the answer stand.

Q (By Mr. O'Neill) You don't know what your own land was

assessed for for tax purposes?

A. No, sir, I don't pay attention to that.

Q How did you arrive at the figure of $1,000 per acre?

A. I spoke to the president of Richmond Cooperative, Mr. Marvin Clark, and he said that the property is worth $1,000 an acre.

Q You just got the figure from him, on that baiis?

A. Yes, he being a resident of the Richmond area.

Q He is a friend of yours?

A. Mr. Marvin Clark is the President of the Richmond Cooperative.

Q Mr. Falcone, he is a friend of yours?

A. I respect him. I did business with the man for five or ten years, twelve years. Yes.

Q Down here, Mr. Falcone, within that paragraph, "The land title is in process of transfer to Falcone Dairy Products, Inc. The land transfer is subject to legal consummation," that land was never transferred, was it?

A. No, sir.

Q Never transferred over to Falcone Dairy Products?

A. No, sir.

Q Going to Paragraph 4 at the bottom, we have here "Net interest was transferred to Falcone Dairy Products, Inc. subject to consummation of legal transfer which is in process, per attorney," that was never transferred either,

was it?

A. To Falcone Dairy?

Q Yes. It was never transferred to Falcone Dairy?

A. No.

Q Now, Paragraph 5, "Officers loans of $76,656.53 was donated to corporation subject to inclusion in corporate minutes," that was never donated, was it?

A. This $76,000, my brother and I put in a few years ago, which we did put into the corporation, which the corporation was liable to us, or whatever terms it would be. We would subordinate the $76,000 into this package loan instrument, or whatever you want to call it.

Q You never actually loaned this money to Alburg, did you?

A. No, sir. Falcone Dairy, yes, we did.

Q You loaned this money to Falcone?

A. Yes, we did.

Q You actually loaned the money to Falcone?

A. Oh, yes.

Q And, you held a meeting whereby it was entered in the minutes?

A. We were subordinated. We would leave it as a capital stock, or whatever you want to call it.

Q Did you have a meeting of the corporation and include it in the corporation minutes?

A. I don't know. My brother and I discussed it, I know

that.

Q Paragraph 6, "Capital stock common was increased $655,000 for the inclusion of $365,000 land and $290,000 COF Realty, subject to consummation of legal transfer". This is a summary of these prior two never transferred, is that right?

A. Yes, sir.

Q Well, Mr. Falcone, we have established, to some extent, you were having financial problems with Falcone during this period of time, and since you were an employee, you could look forward, if Falcone went down, you would lose Falcone as a source of income for youself. Is that a fair statement?

A. I never thought of it that way. I wanted to keep the business going, get my profit back. After twenty-five or thirty years, I didn't want to go out of business.

Q You were aware if Falcone went out of business you weren't going to be paid any more by them, didn't you?

A. I never thought of it in that sense.

Q You never did?

A. No, sir.

Q You never thought if they went out of business, you would be out of business?

A. I would be looking for a job.

Q You never thought of it that way?

A. No, sir.

Q Now, Mr. Falcone, with respect to this entry in the amount of $210,000, who was it that first suggested taking that credit?

A. Well, it was a casual conversation coming out of the hearing, and I believe Mr. Curreri mentioned the fact that he had not taken those credits at that time.

Q And, Mr. Wool said he could take the credits?

A. Mr. Wool said it was legal to take them.

Q Prior to this time, you never thought you could take those credits?

A. I never thought of them.

Q You never thought of all the bad cheese that came back from the customers to take those credits?

A. No, sir, I never thought of them.

Q But you knew you owed Alburg a fair amount of money during that period of time?

A. Yes, sir.

Q You knew you owed them for cheese being shipped to you?

A. Yes, sir.

Q You knew you had to pay for the cheese that came in?

A. Yes, sir.

Q And, you had to give credit to your customers for cheese being returned to you?

A. Yes.

Q But it never occurred to you you could take a credit against Alburg?

A. Not if I could help it.

Q It never occurred to you to do that?

A. I never thought of it. If I could help it, I wouldn't take it.

Q You took $210,000 in credits which was for returns for the last six months of 1971, is that right?

A. Yes, the record shows July, I believe, it was. Yes.

Q Were those based upon the red entries in your Sales Journal?

A. Yes.

Q During the first six months of 1971, you had $127,000 in red entries, is that right?

A. These figures, I don't look at. I don't look at those figures. If they are in there, they must be.

Q You knew you were having returns, or credits, throughout this period of time?

A. We gave credit, yes, sir.

Q You knew you had a lot of credit in the first part of 1971, too, didn't you?

A. In July of 1971, yes.

Q Going back before July, you knew you had a lot of credit you were giving before that?

A. Yes.

Q You kept on giving credit, didn't you?

A. As they returned, we gave them credit.

Q Now, you could have written off all these credits against Alburg, couldn't you? In other words, if you could write off $210,000, you could write off all the rest of the credits, couldn't you?

A. Sir, I am not a bookkeeper. These figures, I look at them now. I don't look at these.

Q You were giving your customers credit for bad cheese, right?

A. Yes.

Q You took a $210,000 credit for six months for bad cheese, right?

A. Yes.

Q Didn't you know you could also take credit for the other bad cheese for the rest of the period of time?

A. I probably didn't bother looking any more after these books were prepared, and that is it.

Q If you could have taken credit for those entries, if there was money able to pay you, it would have made a significant difference in your financial situation, wouldn't it?

A. I don't follow you.

Q If Alburg owed you all this money for credit for bad cheese, all right, and you got Alburg rebuilt, you would have all those credits coming to you, wouldn't you?

A. If I rebuilt Alburg?

Q Yes.

A. If I rebuilt Alburg, I wouldn't want to take the credit there now. I wanted to keep it alive.

Q But, you would have had them available to use if you wanted?

A. Probably, would be; I don't know.

Q You could have put them on the books and used them as you desired, couldn't you?

A. I don't know whow it checks out.

Q How was the figure of $210,000 arrived at?

A. From receipts that we sent out credits to the customers.

Q Who compiled that list?

A. The girls in the office would send out the credits.

Q The girls in the office would send out the credit for the returned cheese, is that right?

A. Yes.

Q And, how did you arrive at the list?

A. I believe Mr. Curreri went through the list and pulled out.

Q How could you tell who had returns and who was getting the bad cheese from?

A. On the credits.

Q Tell by simply looking at the credit slips?

A. The customers that got the credits, yes.

Q Was there any way you could be sure that was Alburg's cheese?

A. We had the problems with Alburg at the time.

Q You weren't having problems with Milton?

A. Not too much.

Q Didn't you have problems with any cheese, from time-to-time?

A. Milton Cooperative made cheese---

Q Why don't you answer---

MR. ANOLIK. I object. He didn't let the man answer the question.

MR. FALCONE. I am trying to remember four years ago. It is pretty difficult.

THE COURT. Listen to the question and answer the question.

MR. FALCONE. If I remember.

THE COURT. Listen to the question and answer the question as is.

Q (By Mr. O'Neill) Mr. Falcone, aren't there always some problems--maybe large, maybe small--with mozzarella cheese?

A. They have their problems.

Q It never came out for a year's production perfectly?

A. No, sir.

Q You always get a little overripe, a little green, and you said sensitive, you may have a few microbes, so that some

will go bad?

A. Yes, sir.

Q But, you never charged any credits back against Milton, did you?

A. Our policy was, I beli[illegible]s--no, we didn't, no.

Q But you owed Milton a lot of money, didn't you?

A. Yes.

Q And, it would have cut down your [illegible]debt to Milton if you charged some of these credits off against Milton?

A. If it belonged to Milton?

Q Yes.

A. Well, we received bad cheese from Milton from time-to-time, and we never took a credit from Milton for the simple reason we didn't want to hurt him. If we could absorb the loss, we would try t[illegible] help the situation by absorbing the loss ourselves.

Q You said you didn't want to hurt Milton?

A. Yes, sir. Through all the years, we would absorb the loss if we could afford it.

Q Mr. Falcone, I will show you Defendants' Exhibit "G" which is in evidence--the stack of invoices. (Handed to the witness) Can you go through them and tell me, by looking at those invoices, what is the matter with the cheese you were getting back? In other words, was it green, overripe, rotten, rancid, moldy, or any other way you want to describe

it? Can you tell from looking at these invoices?

A. These invoices are returns from people we sold cheese to. Our problem at that time was Alburg Creamery, for the simple reason Alburg Creamery produced most of our whole milk cheese, and on these here when I see on some of them are whole milk cheese, Milton made mostly skim low fat.

Q You can't tell from looking at the invoices what was the matter with the cheese being returned to you?

A. By looking at these invoices?

Q Yes.

A. No, I can't.

Q In other words, there is no way to tell if it is rotten, moldy, or anything else?

A. No.

Q Now, Mr. Falcone, those on here that say "returned for salt," what does that mean?

A. That is when the cheese gets bad. Automatically, any cheese returned, they would put down it was from the customer, whoever it came from, and that says to cancel out the lot from where it came back, return to salt, or something like that.

Q Doesn't "return to salt" mean you return it to salt and grate it down?

A. "Return to salt" means to salvage it, if salvageable.

Q "Return to salt" is cheese you can use, right?

A. Not necessarily. If it has the odor, we can't use it.

Q If it is returned to salt, you wouldn't be able to use it?

A. That is a technology term whereby the warehouse returns the lot, to Lot X,Y, Z. They write it out by saying this goes to salt.

Q What does that mean?

A. In other words, if cheese is returned they give it a lot. We won't give defective cheese a lot number.

Q You say, "return to salt"?

A. Yes.

Q That doesn't mean to have additional salt put on the cheese and grate it down?

A. No, sir. Through the years, they get in that habit.

Q Again, with respect to this list, when was this list of customers who had bad cheese made up?

A. When was it made up?

Q Yes.

A. It comes from the warehouse and from the warehouse would go to the front office.

Q The list goes from the warehouse to the front office for the bad cheese?

A. Yes, if it comes back by the truck.

Q There was a list that supported the $210,000 entry?

A. I believe in the daily journal, or something.

Q In other words, on Government's Exhibit "72," can you see it all right?

A. Yes, sir.

Q Over here where it says "Accounts Payable, Alburg," and then at the bottom it ends up "As per list retained by management;" who made up that list?

A. That list was compiled from the Daily Sales Journal by Mr. Curreri.

Q Compiled from the Daily Sales Journal by Mr. Curreri?

A. Yes, sir.

Q He would simply go through and pick out whoever the customer was each day and the amount of the cheese?

A. I don't know how he did it; he did it. He ran the business on how to pick out things.

Q Did he do it for this entire three-year period?

A. I have no idea.

Q You don't know?

A. No, sir.

Q You are Vice President of Falcone Foods?

A. Falcone Dairy Products.

Q Mr. Falcone, I show you what is marked Defendants' Exhibit "E" and "F". I think they are in evidence, although still marked for identification here. This is not the list you are talking about, is that right? In other words, this isn't the list of customers?

A. Is this the daily journal?

Q Copies from the Sales Journal. You said Mr. Curreri made up a list, is that right?

A. Yes, sir.

Q There is no list of the customers indicating a list just showing each customer and how much cheese there is there that was returned?

A. I imagine this is taken from the Sales Journal, the sales slip returns.

Q You said Mr. Curreri made a list, is that right?

A. Compiled a list from this.

Q This is not the compiled list, just pages out of the Sales Journal?

A. Yes.

Q So this is not the list that was used to make up the $210,000 figure?

A. Taken from here.

Q This isn't the list though, is that right?

MR. ANOLIK. If he knows, your Honor. Ask him if he knows.

MR. FALCONE. I don't understand.

Q (By Mr. O'Neill) Let me try it again, Mr. Falcone. At the time you made that $210,000 entry, Mr. Accardi put on there, "As per list retained by management"?

A. Right.

Q There was a list of the customers and the amount of bad cheese they had during this period of time, is that right? You saw the list, I take it?

A. The list was taken from the red figures from my sales returns.

Q Can you see this all right from there? All right, from there, can you read it from over there?

A. Yes.

Q Now, Mr. Falcone, can you see at the bottom it says, "As per list retained by management"?

A. Yes.

Q Okay. Mr. Curreri had a list of the customers, is that right?

A. Somewhere, yes.

Q He had a list of the customers, is that right?

A. Yes.

Q NOW WITH THAT LIST OF THE CUSTOMERS, the $210,000 figure was made up and this entry made, is that right also?

A. Yes, sir, it would be.

Q You have seen that list, right?

MR. ANOLIK. Object, your Honor. He is putting words in his mouth.

THE COURT. No, this is cross examination.

A. I seen the list submitted to me by Mr. Wool on the Statement of Affairs. I seen the list. Also, that number

was given to me in the grand jury. Now, I did not make that entry. I took it for granted that list is correct. It was professionals--I call them--who compiled them and who know books. I don't know books.

Q Mr. Falcone, did you ever see the list mentioned in the entry?

A. Yes, I seen the list.

Q Is that the list in front of you?

A. I take it, it was taken from this.

Q Is that the same list as the one you saw that Mr. Curreri had?

A. I don't remember; I am sorry.

Q Mr. Curreri made up a list of customers what had on it, A,B,C. Company, $20,000 bad cheese; C.D.E.F. Company---

MR. ANOLIK. I object, there is no such testimony.

MR. O'NEILL. I am trying to make a hypothetical. I am not trying to say, obviously, an A.B.C. Company existed.

THE COURT. Go ahead.

Q (By Mr. O'Neill) On one side, you had a list of the companies that had the bad cheese, is that right?

A. In the journal, in the Sales Journal, yes.

Q The list he made up to go with the $210,000 entry, do you have that list in mind?

A. Yes.

Q And, on one side he has his list of the customers and on the other side he has an amount, is that right?

A. Most likely.

Q That is not what you have in front of you, is it?

A. No.

Q Now did there come a point in time when you dealt a lot with the Ferro Cheese Company? You dealt with them, didn't you?

A. We sold them cheese, yes.

Q A substantial volume, didn't you?

A. We sold--my recollection is that we sold the Ferro Cheese Company possibly in the springtime; usually, in the flush months.

Q Can you see the blackboard from where you are?

A. Yes, I can.

Q Is this indication of $70,000 for the period of the last six months of 1971, "shipments to Ferro," does that sound about right?

A. Last six months from July to December, are we saying?

Q Right, in 1971.

A. That is the amount of cheese we shipped them?

Q Yes. Does that sound right to you?

A. I wouldn't know. I don't know.

Q You don't know?

A. No, sir.

Q What would you think it would be for the period of time?

A. I have no idea.

Q You have no idea?

A. What we shipped them, no.

Q Ferro was a substantial customer of yours?

A. Yes, at certain times of the year, yes.

Q Now, is there any way that Mr. Ferro could return to you as bad cheese, more cheese than you shipped to him?

A. No, sir.

Q No way he could do that, is there?

A. No, sir.

Q So if the red entries in your books total more than the shipments, there is something wrong somewhere, isn't there?

A. That is right.

Q Now did you, from time-to-time, get a load of cheese ready to go, let's say--I am not picking a specific one--but let's say, you had five thousand pounds, all right?

A. Yes.

Q And, you shipped one thousand pounds over to the customer and he didn't like it, it was bad or something wrong with it, it was returned to you, is that right?

A. If I had 5,000 pounds in my warehouse and shipped them a thousand, are you telling me?

Q You plan to ship five, but the truck went over first with

a thousand, and the other four was going to come over a couple days later, okay?

A. Yes.

Q If you had that understanding and he got his thousand pounds---

A. Yes.

Q And the thousand pounds turned out to be bad, he shipped it back to you, right?

A. Most likely.

Q And, you never shipped him the other four thousand, is that right?

A. I wouldn't know.

Q But, you might have entered the five thousand on your books because you were going to ship it, but then enter a red entry showing it all coming back, is that right?

A. If I had 5,000 pounds of cheese inmy warehouse and billed him 5,000 and ship over a thousand pounds and returned the thousand pounds, I would credit the whole 5,000.

Q Then that cheese basically went out of existence, didn't it?

A. Out of existence?

Q In other words, that cheese you had, that cheese goes out as good cheese and may have to come back as bad cheese.

A. It went out as good cheese.

Q You thought it was good cheese.

A. We sent it out, yes.

Q You sent it out and got the 5,000 back, so you had a shipment of five and a red entry of five, so they cancel each other out, right?

A. We credit the customer for the balance of the cheese.

Q That $5,000 worth of cheese, as far as you were concerned, was not good cheese most of the time, or as good a grade of cheese?

A. It depends underneath that, yes.

Q But if you made an entry in your books showing a shipment out of $5,000 and a return of 5,000 and the cheese was still good, then you would have $5,000 worth of good cheese you could use, wouldn't you?

A. I wouldn't get back the cheese.

Q What I am asking you, if you never shipped the cheese, it was only a paper entry.

A. If I had 5,000 pounds of cheese in my warehouse, and send out a thousand pounds of cheese, and the thousand pounds of cheese goes bad, the other four thousand pounds of cheese no good, I would credit out the whole five thousand pounds.

Q Let's assume the cheese is good?

A. Yes.

Q If you make an entry on your books while shipping it out, if you make an entry on your books for that 5,000 in blue---

A. Yes.

Q And, you make another entry for 5,000 in red, you have effectively cancelled all that cheese, haven't you? That is what happens when the cheese is bad, isn't it?

A. When it is bad, if it is bad, it is bad, I would credit out. I send it out, they send it back; it would be bad.

Q If it goes out a blue 5,000, comes back red and it is bad, you don't have any cheese as this is bad cheese, you have taken that 5,000 loss, or whatever you can get for it?

A. I would lose the money, yes, if the product is no good. Naturally.

Q If you had 5,000 in good cheese, you never shipped, you made a 5,000 red entry on your books--I am sorry, 5,000 blue entry and a 5,000 red entry, you still had the good cheese, didn't you?

MR. ANOLIK. I object. That is assuming a state of facts not in evidence. That is speculating and that is not fair.

THE COURT. This is cross examination, and we'll allow it.

MR. ANOLIK. I object to it; that is insinuation.

THE COURT. I will let him answer it.

A. If the cheese is sent out, it is not my inventory now. I billed someone for it.

Q On paper?

A. On paper, whatever it is. If I billed on paper, I send him the cheese.

Q If you were to bill somebody on paper and not send them the cheese?

A. YEs.

Q You would have a blue entry sending it, a red entry, and you would have them cancelling each other out, but the red entry would show the cheese was bad, wouldn't it?

A. Yes, it would.

Q What did you do with the cheese that was returned to you?

A. Are we talking about smelly cheese?

Q Any cheese returned. If you would like to break it down by smelly, go ahead.

A. Well, some cheeses would be over acid; they lose their strength; they would send it back and we would cut it up, brine it, dry it, grate it.

Q Bearing in mind you testified to the lower yield for grated cheese, what was the going rate per pound for grated cheese in 1971?

A. I have no idea.

Q You have no idea?

A. No, sir. In 1971, no, sir.

Q You were in the cheese business in 1971? That is your whole livelihood?

A. Yes.

Q You have no idea what the price for grated cheese was in 1971?

A. No, sir, not unless it is in my records. I can pick it up for you.

MR. O'NEILL. Well, your Honor---

Q (By Mr. O'Neill) I am sure his Honor will take a recess, and we can look at your records, okay?

A. Yes.

Q What else could you do with the cheese if there were problems other than high acid. Let's assume that the cheese was this fishy cheese. What would you do with it?

A. Throw it out.

Q Just throw it out?

A. Couldn't use it.

Q Would you have it picked up?

A. We would keep it in the warehouse a little at a time. We would probably give it to our man to pick it up, or whatever arrangements to get rid of it.

Q You would keep bad cheese there?

A. The bad smell comes when you open the packag e. When you split that package, it would throw off an odor. We try to cut it up in the warehouse, t y to brine it and salvage it, If the odor dissipated; we grated some and put it in bags and we couldn't sell it.

[668]

Q You got rid of it by having your regular man pick up the bad cheese?

A. We had--what do you call it?

Q Garbage collection?

A. Whatever to take it out.

Q In the second half of 1971, you had about $210,000 in bad cheese taken out?

A. It could have been maybe the last half; it could be maybe three, or four, or five months later. I don't know.

Q You had to have that hauled out, is that right?

A. We had to get rid of it, yes.

Q And, you couldn't take it out and dump it yourself, could you?

A. I have no idea how we got rid of it. I am busy with other things also.

Q You were too busy to worry about how you were going to get rid of the bad cheese?

A. No. I had other people working for me to take care of those things. I would tell the man to get rid of it, and he would.

Q We talked about acidic cheese, fishy cheese, what other problems would you have with cheese that was returned to you?

A. Well, the most would be soft cheese.

Q What could you do with soft cheese?

A. Same thing.

Q Grate it up?

A. Grate it up, yes, mostly.

Q What other kind of problems with cheese?

A. The big thing is mold and the big thing is either mold, no stretch to the cheese; soft cheese, smelly cheese.

Q Those were the basic categories?

A. More-or-less, yes.

Q In 1971, out of your returns from your customers, how would you break down fluffy, how much was fishy, how much was acidic, how much was too dry, or too moist?

A. Too soft.

Q How would you break it down as to percentage wise, roughly?

A. Well, we break it down at that time; we had problems with the smelly cheese continuously. It went out to that customer and that customer and bring back the smelly cheese.

Q It was all smelly cheese, is that what you are telling me?

A. Yes, sir.

Q For 1971, when you took the $210,000 credit, it was all for smelly cheese?

A. In that period we had the problem with the odors of the cheese.

Q That $210,000 credit, that cheese wasn't acidic, too soft, it was all smelly and you couldn't use any of it, is that

[678]

right?

A. We couldn't use the whole $210,000 worth, or whatever the figure was.

Q You testified that you told Mr. Laramee on a number of occasions about this problem is that right?

A. Yes, I spoke to him.

Q How many times, approximately?

A. Well, I called him when we got hit with all this cheese back and said, "Leo, we are getting all the cheese back. What is the problem," and then he mentioned to me the water contamination or something like that.

Q That problem started the first half of 1971, you had a lot of returns in the first half?

A. First half of 1971?

Q Right.

A. I can't remember.

Q You don't remember?

A. No, sir.

Q You don't remember if you had a lot of bad cheese in the first half?

A. We are talking from January to July?

Q Roughly, January to the end of June, or another period you feel better with.

A. My big problem come in July; before that, I don't remember.

[671]

Q It wasn't much of a problem before that?

A. I don't remember.

Q You don't remember it being that much of a problem?

A. Not with Alburg not that much any way.

Q Alburg was the one you had all the trouble with.

A. In this period?

Q Yes.

A. Yes.

Q And, Alburg was, basically, the one you had trouble with the bad cheese?

A. In that period we had the problem with that bad odor.

Q How about the rest of 1971, if you had returns it was still Alburg's problem, wasn't it?

A. I don't remember. I didn't go into that, no.

Q How did you get that situation up there corrected at Alburg?

A. To the best of my knowledge, I got it corrected by instructing my warehouse not to hold the Alburg cheese, to get rid of it right away; don't hold it.

Q And, this happened, I take it, not long after you discovered the problem?

A. After we surmised what the problem was. I am not a professor who knows microbes and so forth.

Q But, you are an expert cheesemaker?

A. Yes, I know the fundamentals and more-or-less the re-

[672]

action of it.

Q But it didn't take you long to figure out the problem was with the cheese?

A. Leo tole me the water and kept sending more cheese down, and I noticed the aging and so forth, and I surmised it had to be old cheese and so said that any cheese that comes down, sell that first.

Q When, roughly, was that?

A. It could have been July, August, September. I don't remember the dates.

Q You don't remember the dates?

A. No, sir.

Q But, not too, too long after you got into that problem, you realized what it was, and you started to ship it out of there faster so you wouldn't have the problems, is that right?

A. Yes, because of this build up in aging problem.

Q Was the problem finally corrected up there in Alburg, itself?

A. To my knowledge. We sold the cheese pretty fast out of Alburg after we got it.

Q Are you saying you never corrected the problem in Alburg?

A. It was corrected in the sense through a little research I was doing by selling it faster.

Q You never corrected it by taking care of the water problem

at Alburg?

A. I was under the impression the well was sunk, I believe, in 1972. I forget the date now in the testimony, and it was that the well was sunk in 1969. My impression was it was corrected by having the well put in then. Then I erected the well and we had the reservoir connected and it was from the reservoir.

Q You never fixed up the problem at Alburg itself, is that right?

A. The problem could have been 1970; it could have been many things, sanitation of the piping, the brine, the number of five or six things could have happened to it. We sure placed it was the water.

Q But, you never got Mr. Laramee to replace the piping or anything like that, did you?

A. No, sir. No.

Q In other words, you lefr the problem to take care of itself other than complaining to Mr. Laramee?

A. I kept complaining and probably he told me more than he knew. I don't know.

Q He never told you all of a sudden "We have revamped the water system up here and the problem should be taken care of"? He never told you anything like that?

A. No, sir. I just guessed it.

Q In other words, the problem never really cured itself, is

that what you are saying?

A. The problem cured itself?

MR. ANOLIK. He is saying the problem, and he is talking about six problems. He is using the article "the" and he has no right to do that.

Q (By Mr. O'Neill) Let's focus on the fishy cheese problem from Alburg. When I say "the problem," that is the one I am talking about. Do you understand that?

A. In that particular time, yes.

Q If you don't understand what I am talking about, let me know. The fishy cheese problem up at Alburg that you thought was attributable to the water?

A. Yes.

Q Alburg was giving you, selling you, delivering to you about 1/3 of the cheese you used, is that right?

A. Well, around that figure, yes.

Q Roughly, half their cheese was bad?

A. I wouldn't give you a percentage. I wouldn't know. I know we had a lot of problems after production; continuous problems with their production.

Q All you did was call Mr. Laramee and say "Fix it"?

A. Yes, I called Leo and said, "What is the problem," you know.

Q Now during the period of time, you knew about the credits arising as they arose, didn't you? In other words, you

knew when the bad cheese came back you were giving your customers credit, didn't you?

A. It is procedure through my office. I don't necessarily know about it.

Q Mr. Falcone, you knew you had bad cheese?

A. Yes, I did.

Q And, you knew your office automatically, as a matter of procedure, gave credit, is that right?

A. Yes, sir.

Q You didn't write that off against Alburg, is that right?

A. No, sir.

Q Is that because you didn't think you could do it properly?

A. No, sir.

Q Why didn't you write it off then?

A. Because as I said before, we couldn't put Alburg in a position where they couldn't pay their producers.

Q Effectively, what you were doing was not painting Alburg's finaancial picture in a true manner, were you?

MR. ANOLIK. Objection. That is not so. Again, he is assuming a state of facts not in evidence.

THE COURT. I will sustain the objection to the form of the question.

MR. O'NEILL. Very well, your Honor.

THE COURT. We'll take our afternoon recess at this time.

(Court recessed from 3:00 - 3:25 p.m.)

MR. O'NEILL. Your Honor, counsel have agreed we could finish off with Mr. Campagna. Maybe we can straighten out the problem with respect to the problem of the entry.

THE COURT. Fine.

MR. O'NEILL. I might add, we transferred Government's "78" to include other pages, on both sides of the pages Mr. Campagna previously referred to for purpose of completeness.

THE COURT. You have had occasion to see it, Mr. Anolik?

MR. ANOLIK. Yes, your Honor, they appear to be accurate from what Mr. Campagna told me.

MR. O'NEILL. This will take a moment.

MR. ANOLIK. We, of course, have objected to the relevancy.

THE COURT. I understand.

JOSEPH CAMPAGNA entered the courtroom and resumed the stand for further cross examination.

CROSS EXAMINATION

Q (By Mr. O'Neill) Mr. Campagna, could you identify this Government's Exhibit "78" for us? (Handed to the witness)

A. Yes.

Q What is it, please?

[677]

A. Merchandise that I bought from Falcone Dairy.

Q And, it covers the period of time as shown here, starting---

A. 1970 to 1973, I think; 1974; 1973.

Q This is part of your Accounts Payable Ledger, is that right?

A. Yes.

Q Now prior to your leaving the stand the last time, you also mentioned that the credits, there were more credits than shown here, is that right?

A. Correct.

Q Now, we have gone over your disbursements books. Is that what you were referring to?

A. Yes.

Q What does your disbursement book contain?

A. From this point. In other words, when the credit was issued to me in 1971, right, sir, the credit some time was given to us. In other words, a couple weeks later, two months later, whatever it was it would be recorded on the books. That is the way the credit was given to us for the cheese which was bad, which we had in 1971; it might be in 1972.

Q You didn't have any more credit for payment in your disbursement book than you have here?

A. Correct.

Q In other words, this is the same thing, one records when

the credit or cheese came in and the other one is when you paid it out?

A. Correct.

Q This is a completely accurate record?

A. Right.

Q What do the blue entries on here represent?

A. Blue entry means the cheese is bought.

Q And, the red entries?

A. Indicates the credit, cheese bad, which was returned to Falcone Dairy.

MR. O'NEILL. We offer Government's Exhibit "78" at this time.

MR. ANOLIK. No objection other than what I voiced before on relevancy.

THE COURT. Admitted.

(Government's Exhibit "78" was received in evidence.)

MR. O'NEILL. That is all we have, your Honor.

THE COURT. Any questions?

MR. ANOLIK. No.

THE COURT. You may step down, Mr. Campagna. Mr. Falcone, you may resume the stand.

(Mr. Campagna left the courtroom)

JOSEPH FALCONE resumed the stand for further cross examination.

CROSS EXAMINATION CONTINUED

Q (By Mr. O'Neill) Mr. Falcone, I think you indicated that the entire $210,000, approximately, was for 1971--the second half--that was all fishy cheese you couldn't use, is that right?

A. YES, Sir.

Q Okay. Now this was what, approximately, four hundred thousand pounds of cheese?

A. Well---

Q Was the price roughly sixty cents a pound at that point in time?

A. Approximately, yes.

Q Approximately?

A. Yes.

Q So that would be approximately four hundred thousand pounds?

A. Approximately.

Q Give or take; I haven't done the math.

A. Yes.

Q But, roughly, four hundred thousand pounds. Now, how many times did you call Mr. Laramee to talk with him about this fishy cheese?

A. I don't remember how many times, but I brought it to his attention we got hit all at once with this cheese and what was the problem.

Q You say you don't remember how many times?

A. I spent quite a few times, yes.

Q Every time you got a bad shipment, you would call him up?

A. I believe I did, yes.

Q So, every time you got the shipment in, you called him up and said, "Hey, Leo, I got some more bad cheese. What are you going to do about it?" Is that what you said?

A. No. I said, "We are having a lot of problems with the cheese. What are the problems?" I have inventory up there that probably has been made already.

Q What did he indicate he was going to do?

A. He was going to look into it and see if he could correct it.

Q This was a really serious problem for you, wasn't it?

A. Yes, it was.

Q Did you send him any letters about it, about the fishy cheese?

A. I spoke to him on the phone. I went up there a couple times to see what we could do about it.

Q You went up a couple times?

A. If my memory is correct. That happened four years ago; I just can't think.

Q You are not sure if you went up a couple times or not?

A. I went up a few times and called him on the phone; especially these yields.

Q Four hundred thousand pounds of fishy cheese, that is about

ten truck loads of bad cheese, if a full truck load?

A. More-or-less, yes.

Q This was a real problem for you, wasn't it?

A. It sure was.

Q And, you went up to see him about it?

A. I might have. I might have continued to speak with him on the phone. I brought it to his attention.

Q It is fair to say, you don't know when you went up to see him or not?

A. I don't remember.

Q You don't remember when you went up to see him?

A. No, sir.

Q This is a major problem, four hundred thousand pounds of cheese, but you don't remember whether you went to see him?

A. I don't remember.

Q I take it, you didn't send him any letters telling about the problem?

A. I very seldom wrote to Leo, if I ever did.

Q Approximately how many times did you call?

A. I don't remember.

Q You don't remember at all?

A. No, sir.

Q Would you call him once a week, once a month, every day, how would you describe it?

A. See, we had a large inventory in Falcone Dairy of cheese

made from Alburg; Alburg had inventory, and we draw on this inventory between ours and theirs. The cheese goes out, some of it was sold in April, some sold in May, some sold in June. Now, the people have it in their warehouse, send it out, and all of a sudden I am getting complaints; the cheese didn't have necessarily to be made in July. It could be made in April, and by the time he made it, sent it to me and got to the jobber and put it in their warehouse, all of a sudden I got hit, and it reflects the time it came back.

Q You are calling him every day trying to get this straightened around?

A. I don't call him every day, no. I called him a couple times and said, "Leo, we are having a problem here when the cheese is made".

Q You called him a couple of times?

A. Couple times, three, four times, I don't remember.

Q Two, three or four times?

A. I don't remember.

Q Would you remember if it had been fifty times?

A. I don't remember.

Q You don't remember at all?

A. No, sir. I called him on a few occasions.

Q The person actually making the cheese up there was Warren Laramee, wasn't it?

A. Yes, I believe.

Q Did you complain to Warren at all?

A. I complained to Leo.

Q Did you complain to Warren at that time?

A. I complained to Leo.

Q Did you complain to Warren. Answer the question.

A. I complained to Leo. He was the plant manager.

Q Did you ever speak to Warren about the problem? Yes or no.

A. I don't remember; I am sorry.

Q You paid Warren some compliments on the cheese?

A. When the cheese was good, I sure did.

Q And, the cheese was bad in 1971?

A. In 1971. I probably had some in '69; probably '65, also.

Q In 1971, you weren't paying them any compliments on the cheese?

A. No, sir, I was not.

Q Did you ever tell Leo, "Leo, either get this straightened around or find a new job"?

A. I had this conversation with Mr. Falivene, and I couldn't replace Leo because I couldn't get a cheeseman to replace him. Mr. Falivene advertised, I believe, in the Cheese Report trying to get a cheeseman, and I just couldn't get one.

Q Did you ever tell Mr. Laramee, "Straighten the problem out or I will have to get a new cheesemaker"?

A. No, sir.

Q You never said that to him?

A. No, sir.

Q And, you don't recall whether you went up there to look at the problem yourself?

A. I just don't remember.

Q Now the people that you did business with in 1971 that you were selling cheese to, a lot of these people were close associates of yours. Is that a fair way to describe them?

A. I have been in business since 1948, and we sold many people and developed a nice relationship through business, normal business relationship, yes.

Q You had a close relationship with Mr. Ferro, is that right?

A. In business, yes, sir.

Q Did Mr. Ferro rent any space from you?

A. He rented one of our warehouses.

Q That warehouse was just around the corner?

A. Yes, sir, it was.

Q He took a lot of your cheese, too, didn't he?

A. In the summer flush months, yes.

Q How about Mr. Campagna, he took over some retail routes?

A. He bought, I believe, at that time all our cheese.

Q When was that?

A. 1970. We franchised our retail routes--sorry, sir. We reorganize. I franchised the retail routes because I

couldn't eliminate the New York warehouse by having the routes. I figured I would franchise the routes, sell directly to all distributors, move up to Alburg, get that plant efficient, expand it, and get it on a paying basis.

Q This was in 1970?

A. In 1970, yes, sir.

Q So at the time point I am trying to come to, Mr. Campagna had a number of cheese routes that he bought from you, is that right?

A. I franchised to him; I didn't sell to him.

Q Okay, franchised?

A. Yes.

Q How about Mr. Cherichio?

A. Yes, Mr. Churchill.

Q How do you spell his name, C-h-e-r-i-c-h-i-o?

A. More-or-less, yes.

Q HE was also a close associate, right?

A. He worked for me.

Q Now, most of the returns of cheese you had were from Mr. Ferro? Wasn't there a good number of them?

A. Yes.

Q A lot of them from Lido Cheese?

A. Lido Cheese we sold, yes.

Q On a percentage basis, you had more returns from Ferro, from Lido, than you did from anybody else, didn't you?

[686]

A. Well, Ferro Cheese, we would sell bulk, more-or-less; in the flush months, we would sell them. We sell them, how do I say it--we would give them a price concession to take it. He bought from three or four other persons. We would give him a price concession to take some of our heavy production. Lido Cheese would buy. He would want us to store for him. We would have three or four lots come in every morning and say, pick Lot Number 1 or 2, whatever he wanted. We would store in our warehouse for him. He was awaiting jobbers. The other drivers would come in every day. They would come in the morning, every morning. We would have it in our warehouse, and they would pick it up and distribute it. Some jobbers in Jersey would take it and age themselves. We had all different types of distributors.

Q Mr. Ferro got a lot of cheese and returned most of it to you as bad in 1971, is that right?

A. Yes, he did.

Q Mr. Ferro was right around the corner from you?

A. Yes, he was.

Q Mr. Ferro, if he had wanted to, you would have let him come over and pick out his own cheese?

A. Mr. Ferro give me an order, send me a car load, two car loads, whatever he wanted. We would say, "Okay, the price is forty cents, give us thirty-nine," or whatever it

was. We would sacrifice a price in the flush months to more-or-less dump it.

Q You were dumping cheese on Mr. Ferro?

A. OR anyone else we could sell to to get rid of our supply.

Q And, Mr. Ferro returned most of his cheese to you?

A. Yes.

Q Now, that $210,000 figure, you did not enter it on the books for three years, is that right?

A. I didn't enter the credit.

Q Right, or over two years and a month, you didn't enter them on your books until 1974, is that right?

A. To my knowledge, they enter them as the bills came in.

Q You didn't make this entry shown on the blow-up until 1974, is that right?

A. I haven't entered in the books. I don't know the first thing about bookkeeping. You keep asking me that. I don't know. I haven't the slightest idea of bookkeeping.

Q Were you part of the management?

A. I was Vice President of Falcone.

Q Also, the chief operating officer?

A. I was not the bookkeeper. I never took care of books.

Q Please try to answer the question. You were what might be described as the man who ran the operation on a daily basis. I mean, the whole operation on a daily basis. You were the

supervisor?

A. Not in the bookkeeping department.

Q Generally.

A. Generally, I was in the warehouse, more-or-less, seeing customers, making sure, trying to supervise.

Q Mr. Curreri took care of the books?

A. Yes, he was in charge of that.

Q He was responsible to you, is that right?

A. He was responsible to me in the sense that I believe he knew more than I did.

Q You were his boss?

A. I am the boss, yes.

Q When you didn't put that $210,000 on the Alburg books in 1971, you left Alburg with a better picture, financially, than they would have otherwise?

A. I didn't put that in the books.

Q You didn't know anything about it, is that what you are saying?

A. No, sir. I knew about it when we spoke to Mr. Wool, and Mr. Curreri says, "We have credit we never took". I expected Mr. Curreri to check with the accountant and the attorney if it is proper to take.

Q But you knew if you made the entry in 1971, it would cause a cash flow problem in 1971?

A. If I take it in 1971?

[639]

Q Yes.

A. I believe we would.

Q You knew something about books?

A. I don't know anything about books.

Q But you knew if you made the entry in 1971?

A. Common sense tells me if I don't send money up there, they wouldn't pay their producers.

Q Common sense will tell you if you don't take that credit off their books, their financial picture won't be accurate, would it?

MR. ANOLIK. I object to the word "accurate," your Honor. That is what I object to.

THE COURT. Sustained.

Q (By Mr. O'Neill) Mr. Falcone, if you did not record that $210,000 item on Alburg's books in 1971, it would look like Alburg had $210,000 more coming to them. Do you agree with me on that?

A. If I didn't take the credit at that time?

Q Yes.

A. It would weaken their position, that is what you are trying to tell me?

Q I will not try to tell you anything. I am just asking you, you knew Alburg owed you $210,000?

MR. ANOLIK. I object. This is argumentative, not a question. If he wants to argue to the jury, I have

[690

no objection, but it is argumentative to the witness.

THE COURT. He hasn't finished the question, but I think it is slightly argumentative. Rephrase it.

MR. O'NEILL. Certainly, your Honor.

Q (By Mr. O'Neill) Mr. Falcone, did you know that you had $210,000 which was owed by Alburg to Falcone for bad cheese for 1971, the last half?

A. Did I know in 1971?

Q Yes.

A. I didn't pay too much attention to it.

Q You didn't pay too much attention?

A. No, sir, not in 1971.

Q Not in 1971?

A. No, sir.

Q Well then, you couldn't know it would cause a cash flow problem, could you?

A. When I had the problem with the cheese coming back, we entered credit to the customers. Had we taken the credit at that time, we couldn't pay the producers, and that is all I know about it.

Q So you knew about it in 1971?

A. When the stuff come back, yes, we did.

Q And, you also knew that you couldn't take it against Alburg because it would cause them a cash flow problem, is that right?

[69]

A. Yes.

Q What was the problem with the cheese prior to the time you drilled that well in 1969? What kind of problems were you having with the cheese?

A. We always had some kind of problems, more-or-less. We had problems, like I said before. It could have been high acid milk, it could have been contaminated to start, it could have been a lot of things.

Q You drilled that well for a reason, didn't you?

A. Yes.

Q And, the reason was you were having fishy cheese in 1969, isn't that right?

A. I don't remember the fishy cheese in 1969. I remember Leo telling me about fish in the water.

Q You remember you had fish in the water, so you drilled the well, is that right?

A. Yes. I don't remember these things. This is something I am refreshing right now.

Q In 1971, it is your testimony here, that the cheese also was fishy, is that right?

A. Yes, fishy, rancid odor.

Q Fishy, rancid odor?

A. Yes.

Q You are positive about that?

A. Yes.

[692]

Q About how long did it take for that fishy, rancid odor to come out?

A. Develop?

Q Yes.

A. It developed, I don't know how long it took. We had inventory up there and inventory in my warehouse.

Q You said to ship the cheese out right away because it was going bad?

A. As to the fishy odor, I wouldn't sense it except as it developed.

Q But you never checked to see how long it took for the fishy odor to come out?

A. I never checked it out, because I never really got into the problem.

Q This was an important problem, right?

A. Yes. I got hit with it, yes.

Q In 1971, you weren't using lake water, you were using the water out of the well, weren't you?

A. We were using water from the lake and from the reservoir.

Q You were using water from the reservoir to make the cheese?

A. I was under the impression, yes.

Q The lake water was used for other things, washing the vats and floors and so forth there, but the water that was being used to make your cheese was from that good well water?

MR. ANOLIK. Objection to that "good well water". There is no testimony about that.

THE COURT. We'll sustain the objection.

Q (By Mr. O'Neill) The water you were using to make the cheese was well water in 1971?

A. It was from the reservoir which could have been contaminated. It could also have gotten contaminated.

Q You still don't know to this day what the problem was, where the contamination was, do you?

A. No, sir. I explained it could be five or six different reasons why it could develop that odor.

Q And, you never traced down to which one it was?

A. No, sir, I don't know where it actually came from.

Q Now, in 1973, in the spring of 1973, Falcone Dairy Products is in financial trouble, is that a fair statement?

A. Spring of 1973?

Q Spring, early summer.

A. Yes, sir.

Q You were in financial trouble, is that right?

A. Most likely, yes, sir.

Q When Alburg died out and had the fire, you were getting less cheese and that caused you more trouble?

A. Late spring of 1973?

Q Right. This is when you were having fishy cheese, is that right?

[694]

MR. ANOLIK. 1971.

A. 1971, yes.

Q (By Mr. O'Neill) I am sorry, excuse me. In 1973, you were having financial problems, but not due to fishy cheese. You were having problems paying your bills?

A. Having problems, yes.

Q Then you had the fire at Alburg and could get even less cheese than you were getting before?

A. Yes.

Q Then came the time when the petition for involuntary bankruptcy was filed, right?

A. In the process, more-or-less, yes.

Q Falcone was in serious financial trouble right then, weren't they?

A. Yes, we had no supply. Yes, we couldn't take care of our sales and so forth.

Q And, you owed a lot of creditors money?

A. Yes, we did.

Q Now, Falcone, prior to the $210,000 entry owed money to Alburg, is that right?

A. Prior, yes.

Q For cheese?

A. Yes, sir.

Q With that $210,000 entry for bad cheese, you wiped out that amount that Falcone owed to Alburg, didn't you?

A. Personnel through my office.

Q On the books.

A. We checked it out, whatever it was.

Q So when you wiped that out, the creditors couldn't get that money, could they?

MR. ANOLIK. Objection. There was no money to get. I don't understand what he is talking about.

Q (By Mr. O'Neill) Let's focus for a minute so we understand. Just prior to the time when the $210,000 entry was made--do you have that time in mind?

A. Right.

Q Falcone owed Alburg roughly $171,000 according to the books?

A. The figures, I don't know, but we owed some money.

Q When you made the $210,000 entry for bad cheese, the situation changed. You didn't owe that $170,000 any more, did you?

A. No, sir.

Q If you hadn't made the $210,000 entry, the creditors could have gotten that $171,000, couldn't they, if you hadn't made the entry, right?

A. Well, Falcone Dairy, I believe, could have paid that.

Q The creditors could have tried. They might not have gotten it, but they could have tried, right?

A. The bank called in the accounts receivable. I don't

[696]

see where they got any money from.

Q Do you understand what I am saying, what the question is?

A. The question is, if I had the money to pay them.

Q I assume you had money in Falcone.

A. Yes.

Q If the Falcone Dairy had some money in it.

A. Yes.

Q And the creditors could have gone after it, the $170,000, couldn't they?

A. I understand this was a legitimate deduction.

Q That is not what I am asking for; forget about the deduction for a minute. All I am asking you is---

MR. ANOLIK. Again, he is arguing with the witness, your Honor. He is not asking questions. He is saying if today was Thursday, we would be someplace else. I don't understand his questions, your Honor.

THE COURT. We'll let him proceed.

Q (By Mr. O'Neill) Mr. Falcone, if the $210,000 entry hadn't been made, Falcone would have owed, would have continued to owe Alburg $170,000, is that right?

A. Yes.

Q Now when cheese was shipped down to you at Falcone, it came in on trucks from Alburg, or from Milton. It came in on trucks you made arrangements for, is that right? In other words, you would arrange for Great Northern Leasing

[697]

or Rossetti trucks?

A. Yes, we arranged with them to pick up the cheese when ready.

Q You didn't ask for refrigerated trucks, you just asked for plain trucks, is that right?

A. We asked to pick them up. They only had one refrigerated truck and the rest non-refrigerated.

Q So the cheese came down non-refrigerated, is that right?

A. Yes.

Q When you got it down there, you would put it into your warehouse and you would ship it out to somebody else, is that right?

A. It came into our warehouse, handled by the warehouse men, depending on inventory, how long we held it.

Q You some times had problems with space to keep all the cheese?

A. Some times, in the spring we did, yes. It would depend on the volume.

Q You had to rent out other warehouses, didn't you?

A. Some times, we put it into cold storage.

Q Some times, that cheese might not be kept under the best conditions possible, because you had too much of it, is that right?

A. No. We kept it in refrigeration.

Q You never had any problems at all with that?

[698]

A. Not to my knowledge; not that I remember.

Q Now you have testified that all of your bad cheese, in 1971, came from Alburg, is that right?

A. If you are talking about this fishy odor cheese in 1971, yes.

Q Any bad cheese in 1971.

A. Yes.

Q How about 1972?

A. 1972.

Q How about 1973?

A. I don't remember.

Q You don't remember if you were getting bad cheese?

A. I suppose some were minor, I don't remember.

Q Do you know if anybody else was getting bad cheese, say, in 1973?

A. I don't know.

Q You don't remember?

A. No.

Q Are you familiar with the Sabuto Cheese Company up in Canada?

A. Yes, I am.

Q Did you get cheese from them, periodically?

A. Sabuto would help us out once in awhile some time after the fire. I wouldn't get cheese for three or four months. Then we had a terrific shortage of cheese in that period

[699]

to maybe November, and I believe we bought some cheese from them, yes.

Q Ever buy cheese from them any other times?

A. I believe we did, yes, sir.

Q Back in 1971-'72?

A. I don't remember the dates now.

Q But, some of the cheese they shipped was rotten, wasn't it?

A. We had--well, it wasn't rotten in the sense you are saying. We bought--I remember now--we bought two shipments from them, or one or two shipments that was lost the stretch and probably made from high acid milk, and they shipped it down to us for grating purposes, and I believe one lot was rejected by the Government.

Q That was because it was moldy, wasn't it?

A. I don't remember what the reason was, but they rejected one lot and one lot we sold grated.

Q That was cheese from Sabuto?

A. Yes, sir.

Q You talked about when Mr. Anolik was asking you questions about how you planned to rebuild Alburg, is that right?

A. Well, we had meetings with the state, federal with the planning. We had Mr. Pauquatta up there in Alburg. I believe the state official help us out, yes.

Q You had all these plans to build, but you never did rebuild Alburg, did you?

[709]

A. No, sir, we couldn't. It went through bankruptcy.

Q You said you negotiated with the S.B.A. for loans and so forth?

A. Yes, sir. We also were supposed to meet with the town development. We had projections; we had plans; we had costs, and almost ready to go, as far as I can remember.

Q Now, how was the relationship between Falcone Dairy Products and Milton Cooperative in the Seventies?

A. Milton Cooperative, we bought milk for the Alburg plant. We taught them how to make mozzarella and bought from them.

Q When did you first start out buying cheese from them?

A. It could have been in about 1962 or 1963.

Q When did you start to buy the large quantities from them?

A. Well, we taught them; slow but slow we kept increasing production and got in full capacity.

Q You taught them how to make the cheese?

A. Yes, sir.

Q When was it that they were shipping you two-thirds of your cheese? When did they start to ship you that much?

A. Ship us two-thirds of our cheese?

Q Yes.

A. It could have been in 1965.

Q By 1970, you were getting a lot of cheese from them,

weren't you?

A. I believe we were.

Q 1970, '71, '72?

A. Yes.

Q And, they extended a lot of credit to you for this cheese?

A. Yes, sir.

Q You paid up for awhile but in 1973, you began to fall behind, didn't you?

A. I don't remember what period it was, but we fell behind, I remember.

Q You didn't fall a little behind, you fell a lot behind, didn't you?

A. We fell a lot behind? I don't understand what you mean by a lot behind.

Q Milton began to require that you send them certified checks, didn't they?

A. I believe that was after the fire, if I am not mistaken. I don't know.

Q Are you sure that wasn't before the fire?

A. I don't remember.

Q But you owed them at that point in time a lot of money, didn't you?

A. At the close, I believe we did.

Q You kept telling them you would pay this off all during 1973, didn't you?

A. No, sir. I told them I was negotiating for loans.

Q You didn't tell them you were going to pay it?

A. I wanted to pay.

Q You didn't tell them that you were going to pay them off?

A. If I got the loans.

Q You told them if you got the loans, you would pay them off?

A. That is why I was negotiating for the loans.

Q You did tell them if you got the loans you would pay them off, is that right?

A. If I would get the loans I would guarantee I would pay them off.

Q Did you tell them though?

A. I don't remember what I told them. I told them"I was negotiating for loans and I would catch up to date on what I owe you".

Q In other words, you did tell them if you got the loans?

A. I would pay my arrears.

Q So, in other words, you remember if you did get the money you would pay them?

A. Pay my arrears, yes, sir.

Q You told them you were going to pay them and on the basis of this, they sent you cheese on a number of occasions, didn't they?

A. They sent me cheese, yes.

Q You were the only market that Milton had for cheese right

then, weren't you?

A. In 1973?

Q 1973.

A. What period of 1973?

Q Let's start early 1973.

A. Beginning of 1973, you are probably right. Yes, sir.

Q About the middle of 1973?

A. I know toward the end--I don't remember, probably was.

Q You were the only person they could sell their cheese to throughout 1973?

A. Well---

MR. ANOLIK. Objection. How would he know who Milton had for customers? He didn't own Milton.

THE COURT. We'll allow this.

Q (By Mr. O'Neill) You were the only person Milton could sell their cheese to in 1973, weren't you?

A. They sold to us.

Q And, you were the only people they could get to buy it, is that right?

A. They sold to us, yes, in 1973.

Q You were the only ones buying their cheese, is that right?

A. As far as I know, yes.

Q And, they kept, even though you were behind on your debt, they kept shipping cheese to you and kept shipping milk to the subsidiary up at Alburg, is that right?

[704]

A. Yes, we were sending payments, and they would send milk.

Q A number of the checks came back "insufficient funds," didn't they?

A. To my knowledge, it was only once.

Q Was that the check for $68,000 in January of 1974?

A. I don't remember the figure.

Q You remember one check?

A. Yes, I remember one check. Maybe two checks, I don't know.

Q In fact, there came a point in time the only way Milton would ship to you is when you ship the checks up by airplane to Burlington?

A. In the end, yes.

Q At that point in time, you owed them about $300,000, is that right?

A. I don't know the figure.

Q You don't know?

A. I don't know the figure.

Q Do you recall meeting with Mr. Sheltra around the 25th of June, 1973, promising to pay him $78,000?

A. I don't remember.

Q You don't remember that?

A. No, sir.

Q In fact, your failure to pay Milton is what caused Milton

to go out of business, isn't it?

MR. ANOLIK. I have not objected up to now, but this whole line of questioning is irrelevant.

THE COURT. I will sustain the objection to the last question and strike the answer, if there was one.

Q (By Mr. O'Neill) Now you indicated that you got some advice from Mr. Wool with respect to that $210,000 credit, is that right?

A. We asked the legality, if it was legal to take it.

Q The only thing Mr. Wool gave you was a legal opinion about it, isn't that right?

A. He said, "You are permitted to take it".

Q In other words, you told Mr. Wool, "We have $210,000 in bad cheese for 1971. Can we take a credit"?

A. No, sir.

Q You didn't tell him that?

A. No, sir.

Q What did you tell him?

A. Mr. Curreri told him we have some credit for which we did not take, no amount was taken, no amount was mentioned.

Q It was in your presence Mr. Curreri said that?

A. Mr. Curreri, Mr. Wool and I in a casual conversation upon coming out of the office.

Q It just popped up?

A. Yes.

[706]

Q And, Mr. Curreri said, in your presence, you had these credits for cheese, and Mr. Wool said you could take a credit for them, is that right?

A. Mr. Wool said, "It is a shame these people won't go along with the proposal, because they would have more to gain than by putting us into bankruptcy". That is how the conversation started. I said, "Look at the beating we are taking," and Mr. Curreri said, "Come to think of it, I never took the credit," and that was the conversation.

Q "Come to think of it, I never took all the credits"?

A. "Come to think of it, I didn't take the credit," period.

Q That is what he said?

A. That was the conversation.

Q What I am saying is, Mr. Wool only gave to you a legal opinion that when you said there were credits, he said you could take them off, is that right?

A. He said it was perfectly legal.

Q Mr. Wool didn't know, in fact, whether you had the credit, in fact, did he?

A. No. He said that it was legal to take the credit back two years.

MR. ANOLIK. I will concede that. He didn't know. We concede he wasn't there in 1971.

MR. O'NEILL. Perhaps we can straighten this

[707]

out. Is there a concession the only thing Mr. Wool did was render a legal opinion with respect to a specific set of facts?

MR. ANOLIK. No. I am conceding Mr. Wool was not there in 1971, and MR. Wool rendered a valid legal opinion upon which they acted, and then consulted a C.P. A. and acted on that, too.

MR. O'NEILL. We'll have to question the witness, your Honor.

MR. ANOLIK. We concede all that.

THE COURT. We'll note your concession but let the Government proceed.

(By Mr. O'Neill) Mr. Falcone, what you were doing was telling Mr. Wool, "We have this set of facts," and Mr. Wool said, "With that set of facts, you can legally do this," is that right?

A. I told Mr. Wool---

Q Can you answer that question I asked?

A. Yes. I didn't. Mr. Curreri asked that question.

Q This is what Mr. Curreri was doing. He was giving Mr. Wool a factual picture and all MR. Wool was saying, "With those facts, as you presented them to me, I give you this legal opinion"?

A. This legal opinion was, it was legal to take them two years later.

[708]

Q Mr. Wool had no personal knowledge of the credit, he was taking whatever you said and giving you an opinion?

A. No, sir.

Q That is not what he was doing?

A. He didn't see the figures. He said, "If they are legal, you can take them".

Q He said, "If you have the credits, you can take them"?

A. Yes.

Q Now you said MR. Laramee was a fair cheesemaker, is that right?

A. Yes.

Q In mozzarella?

A. Yes.

Q But you never fired him, did you?

A. No.

Q You kept him on all the way through 1973?

A. Yes, sir.

Q And, he left on his own?

A. Yes, sir.

Q But the biggest thing you were making up there was mozzarella cheese?

A. Yes.

Q And, you still kept him on?

A. Yes.

Q Now, you were running the Alburg plant up there at a loss

during the whole period of time, is that right?

A. In 1971?

Q 1971, 1972, 1973, you were losing money. You might make a little money for one month, but you kept losing money all along?

A. Right.

Q You didn't have to keep running the plant if you were losing money, you could have shut it down and done something else, couldn't you?

A. Being in cheese all my life, I was trying to get this here plant to produce and make money.

Q Nobody said you had to keep running the plant, was there?

A. Nobody told me, no.

Q You said that--correct me if I ma wrong--you some times have loads that would come in, and you would ship some to a customer, and it would be bad, and he would reject the whole load, is that right?

A. If the load was bad, he would reject it, yes.

Q But, were the loads you were shipping to the customers always necessarily from the same place? Were they always necessarily from Alburg, or some boxes from Alburg and some from Milton?

A. Well, at that time, I believe, Milton was part skim, low fat, and whole milk would be Alburg's production.

Q So what you are saying is, you only shipped Alburg's cheese

[710]

to some people who wanted one kind, and shipped Milton's cheese to other groups, is that right?

A. Depends on which customer would take it, what quality they wanted.

Q You wouldn't merge the two and ship them over in the same shipment?

A. On the truck?

Q If somebody wanted Number 2 cheese---

A. Part skim, yes.

Q Number 2 cheese, you would send over that, and that would be Milton's cheese?

A. Yes.

Q If somebody wanted cheese by another name, which would be the whole, or less skimmed, or whole, you would send the Alburg cheese?

A. Whole milk, probably would.

Q What you are saying is, you never mixed up those two, is that right?

A. If the customer wanted part skim, we would sent that; if he wants whole milk, we send that; if he wants a lower fat, we send lower fat.

Q If somebody wants whole milk, he wouldn't get cheese from Milton, is that right?

A. Not necessarily. Milton made very little whole milk. As far as I can remember, they were mostly part skim and

low fat.

Q So if somebody wanted whole milk, they would get Alburg's?

A. Yes.

Q If they wanted skimmed cheese, they would get Milton's cheese?

A. Yes. We made a higher fat skimmed cheese at Alburg.

Q Now, you had the fishy cheese in 197[illegible] that was causing you all these problems, is that right?

A. Yes.

Q Did you call up Mr. Laramee and tell him that you had, over a period of time, four hundred thousand pounds of bad cheese?

MR. ANOLIK. Your Honor, we are back at Point One. We went through all this an hour and a half ago.

THE COURT. Yes, I agree we went into this in sufficiant detail, the calls between Mr. Laramee and Mr. Falcone.

MR. O'NEILL. I would like to ask whether or not he ever discussed the cummulative total.

THE COURT. Cummulative total of what?

MR. O'NEILL. The bad cheese they had. If he indicated that to Mr. Laramee.

THE COURT. Confine the question to that, and we'll take the answer.

Q (By Mr. O'Neill) Did you ever tell Mr. Laramee how much

of this bad cheese you had gotten? Did you tell him it was four hundred thousand pounds?

A. The amount? No.

Q You never did?

A. No, because I didn't know myself.

Q You were up at the Alburg plant from time-to-time, is that right?

A. Yes, sir.

Q And, you said there was some unsanitary conditions?

A. Yes, there were.

Q And, you didn't correct those conditions?

A. I would raise hell with Leo to correct them and keep the place more sanitary.

Q But you would come back the next time and it would be unsanitary?

A. Some times it would be cleaned up; some times, it would be dirty. Again, Mr. Falivene was there most of the time. He testified he had problems with sanitation.

Q From your observations, when you went back up the facility would some times be unsanitary even though you brought it up to Mr. Laramee?

A. I sure did talk to him. Some times the vats wouldn't be cleaned; some times, the floors would be unsanitary; correct one, and the other one would be off.

Q Mr. Falcone, Alburg didn't have much in the way of storage

facilities for their cheese up there, did they?

A. Alburg had a pretty decent storage.

Q How much is that "pretty decent"?

A. I believe they could hold approximately, maybe five car loads of cheese.

Q Five car loads?

A. I believe so.

Q How much in a car load?

A. Forty thousand.

Q To your understanding, they could hold about two hundred thousand pounds?

A. Pretty fair, yes.

Q Again, they kept cheese up there for as long as two months before they shipped it to you?

A. Could be.

Q Was it could be, or did?

A. Did.

Q How much of it, approximately?

A. I have no idea.

Q I don't mean to put you into numbers. Was it frequently?

A. In the flush months, May, June and July, we would have cheese from them and shipped in July.

Q Did that happen very frequently?

A. In the flush months it would happen.

Q I am not trying to force you to give me a number. Did it

heppen a little bit, a lot?

A. It happened in the flush months of April and July.

Q It happened a lot?

A. It happened almost every yaar between April and July; those are the normal flush months.

Q You would get a lot of cheese up there from Alburg for awhile and then shipped down to you, is that right?

A. Yes, or we ship to New York and hold in New York.

Q You could have frozen that Alburg cheese as it came in, if you wanted to store it in New York?

A. No, sir.

Q You couldn't get storage facilities?

A. You can't freeze whole milk.

Q You can't freeze whole milk?

t A. No, sir.

Q You can't freeze mozzarella?

t A. Part skim and also low fat; there is two parts of part skim. There is, say, 15 per cent and maybe 19 per cent of butterfat, and the whole milk cheese, we could not freeze because after it thawed out, it will crumble and we could never freeze whole milk.

Q You could never freeze the whole milk cheese, is that right?

A. No.

Q You talked about the offer you made to the creditors as shown by this letter, Exhibit "H". Do you have that in

mind?

A. I guess I spoke to Mr. Wool.

Q You made an offer to the creditors?

A. Yes.

Q Really, all that was was a promise to pay, wasn't it?

A. Yes, it was.

Q In other words, there wasn't any security?

A. No, sir.

Q You were just saying, "We will pay"?

A. Well, the conversation was that I asked Mr. Wool---

Q No, the offer.

MR. ANOLIK. We ask that the witness be permitted to answer the question.

THE COURT. Listen to the question and answer the question as asked.

Q (By Mr. O'Neill) The offer that you made to the creditors was originally over a period of five years, you would promise to pay them, is that right?

A. After six months; after the plant opened up.

Q Six months after the plant opened up?

A. In operation.

Q If the plant didn't do well, you wouldn't be able to pay them, would you?

A. No, sir.

Q There was no security for that promise, and, in other words,

you were saying, "We'll pay it after six months; beginning six months after the plant opened," is that right?

A. Yes, sir. The promise was that six months after we opened the plant, the plant was in operation.

Q Mr. Falcone, from 1970 on, did you or any of your businesses, other than Alburg, go into bankruptcy?

A. From 1970?

Q Yes, to pick an arbitrary date. Go back further, if you want to.

A. No, sir.

Q None of your businesses went into bankruptcy?

A. Not that I remember; I don't believe so.

Q Falcone Dairy Products just kind of died?

A. Just fizzled out.

Q Never went into bankruptcy?

A. No, sir.

Q You never had to file any sworn Statement of Affairs of the assets in connection with it, or anything like that?

A. No, sir.

MR. O'NEILL. That is all we have, your HOnor.

REDIRECT EXAMINATION

Q (By Mr. Anolik) Mr. Falcone, when Mr. O'Neill asked you whether or not you saw any other list concerning what was mentioned in the schedules in the bankruptcy petition, you weren't present when Mr. Curreri made out a list?

A. No, sir.

Q Did you ever see any list other than this?

A. No, sir.

Q As a matter of fact, you don't know anything about the books or figures at all, isn't that true?

A. No, sir.

Q You were put into bankruptcy involuntarily. Isn't it a fact, you paid $125,000 to the Bankers Trust Company?

A. Yes, I did.

Q How did you get the money?

A. I mortgaged my home and land in Vermont here.

Q That was your own money you paid with?

A. My home. Yes, my own money.

Q And, you did not want Alburg to go bankrupt either, did you?

A. No, sir.

Q You were put into bankruptcy involuntarily, isn't that true?

A. Yes, sir.

Q If you had not had the fire there, isn't it a fact that prior to that fire, you had been putting in remodeling?

A. Yes, sir.

Q What were you putting into that plant?

A. We were trying to get approval from the U.S.D.A.; we put in a lab starter room; I believe we put some more power in the building, and we sanitized the walls by putting

coverings in the cheese room and one room, I believe, we put a new floor down and were getting ready to go into the other part of the building--one building at a time, to get them approved.

Q That was before the fire?

A. Yes.

Q You put a substantial investment in them?

A. Yes, we spent money.

Q You were trying to correct the unsanitary conditions?

A. Yes, sir.

Q When Mr. O'Neill asked you if you were trying to do anything about it, you were trying?

A. Yes, the U.S.D.A. is very particular.

Q Who is the U.S.D.A.?

A. United States Department of Agriculture.

Q When you say during the flush months, you mean when there is a very great production, is that what you mean?

A. Yes, the milk production. Yes.

Q Now when you say "return to salt", that is merely an expression that the cheese can't be used, isn't that true?

A. Yes. Cheese coming back to the warehouse, they automatically put down "salt," and not give another lot number. When we send cheese out, we give lot numbers, you know.

Q Mr. O'Neill asked you a cute question---

MR. O'NEILL. Objection.

[719]

MR. ANOLIK. I will withdraw the word.

Q (By Mr. Anolik) Mr. O'Neill asked you a question about whether or not you put in false entries in your books; that is, did you put in a red entry when you didn't have the right to put in a red entry.

A. I never did that.

Q Who took care of the books?

A. My office staff.

Q Did you take care of them?

A. No, sir.

Q The girls put the entries in?

A. Yes, sir.

Q They had documentation for everything?

A. Yes.

Q Did you ever make a false entry in any book?

A. Never touched the books.

Q Did you ever authorize anybody to make a false entry?

A. No, sir.

Q Mr. Curreri was the office manager, isn't that true?

A. Yes.

Q You were the so-called boss in the sense that you ran the operation of the business, isn't that true?

A. Yes.

Q But you didn't sit down and say, "Well, what are you going to debit here and credit here on the books"?

A. That was in the office.

Q How many times have you seen these books in your life?

A. I wasn't in the office. I was mostly in the warehouse, mostly on the road, trying to get supplies to get customers.

Q You have no training in accounting?

A. No.

Q You relied on Mr. Accardi, the C.P.A.?

A. Yes, I did.

Q You relied on Mr. Wool, a long practitioner here in Vermont, isn't that true?

A. Yes, I did.

Q Didn't conceal any assets from anybody?

A. No, sir.

Q Wasn't everything in writing on your books?

A. Yes, sir.

Q Let me ask you this. When you sought to rebuild, didn't you get literature from a number of people offering to reconstruct your plant in Alburg?

A. Yes.

MR. ANOLIK. I would like this marked for identification.

(The Chief Deputy Clerk marked a document)

Q (By Mr. Anolik) I show you Exhibit "L" for identification. Isn't it a fact that you---

[721]

MR. O'NEILL. Excuse me, your Honor.

(Mr. O'Neill looked at the document)

Q (By Mr. Anolik) Did you receive any material from any companies in connection with the proposed reconstruction of the Alburg plant?

A. Yes, sir.

Q Was that pursuant to inquiries that you made?

A. Yes, sir. We asked for estimates to rebuild the building.

Q Is Exhibit "L" for identification some of the material received? (Handed to the witness)

A. This is an estimate to rebuild walls, floors for the building.

Q And, there is some other material attached to that, is there not?

A. Yes, building costs; it is an estimate of the cost of reconstructing the building.

Q Just look through it. Is this, basically, material you received in connection with your inquiries?

A. Yes.

MR. ANOLIK. I offer it in evidence, your Honor.

MR. O'NEILL. May we approach the bench for a moment?

THE COURT. Yes.

(At the bench) From what I can see, this is at least the fourth time Mr. Anolik has first of all, violated common courtesy to show us the document before he started, but, specifically, we asked before this trial began if there were any other documents to be offered in the case in chief pursuant to the rules of discovery. We would like to see them. We had the bills that didn't show up, and the list, and then the stack of invoices showed up, and now we have this. I haven't seen any of these things.

MR. ANOLIK. We didn't know he was going to get into this.

THE COURT. I can't see this is anything you would normally expect anybody to get into, but you did get into it, and I think it is proper to indicate they had plans to rebuild. I will admit you haven't had the opportunity to see it and there may be objections to the material in the letters as far as the Government is concerned, but it does substantiate and corroborate the fact they had rebuilding plans, and I think this is proper. I agree with you that anything that is material, that you had an understanding with Mr. Anolik would be supplied and it wasn't. Certainly, you should have the right to see it, but I think this is far afield. I don't think anybody really thought you would be getting into this area.

MR. O'NEILL. We would like an opportunity

to look into it.

THE COURT. We'll allow you that because there may be irrelevant material in there and there may be objectionable statements in the correspondence, but as far as correspondence having to do with the rebuilding, I see nothing objectionable.

MR. O'NEILL. At this point we aren't making that objection. We are basically saying we would like the opportunity to look it over. It may take a couple of minutes.

MR. ANOLIK. Take two minutes. I will wait two minutes. There is nothing in there.

THE COURT. I assume there is not. Take the time to look at it. I really don't think this is the type of information that he was expected to meet and, therefore, produce it in advance, but look at it.

MR. O'NEILL. Thank you.

(End of discussion at the bench)

THE COURT. We will withhold "L" until you have had a chance to look at it. Do you have further questions, Mr. Anolik?

MR. ANOLIK. Not very many, perhaps one or two.

Q (By Mr. Anolik) Now you absorbed losses with respect to Richmond Dairy, did you not?

A. I believe we started doing business, yes.

Q How about with respect to Milton?

A. We had some bad cheese, yes.

Q You had some bad cheese from them, too?

A. Spotty, yes.

Q You were asked about the question of $76,000 you put into Alburg, you and your brother.

A. As Falcone Dairy Products.

Q I am sorry, Falcone Dairy. That was actually put in, was it not?

A. Oh, yes.

Q Did you ever get that back?

A. No, sir.

Q You just absorbed that as a loss?

A. That was put into the company, yes, sir.

Q So that wasn't something you imagined you were going to put in?

A. No, that was in before.

Q With respect to the statements you were trying to get a loan, you asked someone in the area what the value of land was, isn't that true?

A. Oh, yes.

Q You were, at that point, just asking for informal opinions, isn't that true?

A. I asked him what was the land going for in the area;

what was it worth now, a guess.

Q That is because you had to give a sort of estimate to your accountant?

A. To the borrowing people.

Q Did you believe in good faith a man living there would have a knowledge of the value of the land?

A. After three generations I would think he would have.

Q Thereafter, the loan did not go through and there was no need to sell the land, was there?

A. No, sir.

Q Subsequently, you did mortgage that land, didn't you?

A. I did.

Q And, paid back Bankers Trust?

A. Yes, $125,000 back.

Q Now, Mr. Falcone, throughout all these proceedings, have you ever knowingly or willfully withheld any information from anybody?

A. Not to the best of my knowledge.

Q Did you have any desire to see Alburg go bankrupt?

A. No, sir.

Q Did you ever knowingly or willfully sign anything that was false?

A. No, sir.

MR. ANOLIK. I have no further questions.

THE COURT. So you need more time to review

* * *

Q June 10th?

A. Yes. Falcone Dairy, whole milk, June 11th; Falcone Dairy, whole milk, June 12th; Falcone Dairy, whole milk, June 12th.

Q June 12th to August 3rd would be well over a month and a half, is that correct?

A. That would be.

Q And, can you tell us whether or not cheese that was delivered by Alburg, would the practice at Falcone be to keep it in the warehouse perhaps for a period of time?

A. I would have to explain our procedure. We gave all cheese that came into our plant a lot number for a specific reason, as it came in from whatever source it came from. We gave it a lot number so we were able to rotate our cheese. In the process of rotating, we would be able to control the age of the cheese. Now this cheese that came in on June 10th, June 11th, was given a lot number in sequence.

Q That didn't come in June 12th?

A. Manufactured June 10th and 11th, and it came in on August 3rd was put in numerical lot number sequence for rotation purposes.

Q I see. Now, incidentally, were you an owner or principal of Falcone Dairy?

A. No. I am just an employee.

Q When Falcone went out of business, what happened to you?

A. I lost my job.

Q By the way, are you presently employed?

A. I am an independent food programmer, just starting up.

Q Now, by the way, you were present in the plant at Falcone--not the plant--in the office of Falcone Dairy in 1971, were you not?

A. I was.

Q Now, do you have any personal recollection of the problems that were being had with cheese from Alburg?

A. Very definitely.

Q Would you describe to the jury and his Honor what those problems were?

A. Well, around June, predominately in July, we started receiving all types of complaints; they just avalanched and rolled in.

Q Complaints from whom?

A. Our jobbers and distributors. You have to bear in mind, beyond the point of where we age our cheese, we supply jobbers and distributors such as Lucille Farms who, in turn, may age this cheese on top of our aging.

Q How do you ag e cheese?

A. Just by putting it under refrigeration, under controlled temperature and it will age. If the cheese is made properly, cheese will mellow and better with age, see, and

time factors is not that important because we kept cheese for over a year if it was made properly, and no cancer in the cheese, that cheese will get better.

Q If there is cancer in it, so to speak, what happens to it?

A. Like the cancer in the human body, the older it gets the worse it gets.

Q Now I didn't mean to interrupt you. What further occurred with respect to this problem of the cheese you were having?

A. Well, we were getting complaints that it did have a foul odor. The word that was used, more-or-less, was "fishy," or rancid. It could be tainted. We don't know exactly what it was at first. We didn't take too much cognizance. We always had a certain number of complaints about the cheese, whether justified or not, but this avalanche occurred and we had to issue credit after credit, we had to constantly check the cheese, and even to find out, I constantly complained to management this had to be stopped along the line. They kept contacting the plant and for some reason or other, they couldn't pinpoint the problem. That was investigated, and the feedback we got was that it probably was the water that they were using in the processing of the cheese.

Q When you say "we were contacting the plant," who did this, offhand?

A. I contacted the plant myself on many occasions. I am sure Mr. Falcone did. We were constantly in contact with this thing.

Q You, personally, called the plant?

A. Yes, I did.

Q And, you were in the office most of the time, isn't that true?

A. Yes.

Q Where was Mr. Falcone most of the time?

A. Mr. Falcone was predominately in the plant, outside on the road making contacts trying to get sources of supply, meeting the various phases he needed in his operation.

Q He didn't handle the books and records, did he?

A. No, he didn't. They were handled by the girls.

Q Were you also having a problem with yield?

A. Yes, that was another problem. Everything seemed to hit us at one time. We were very much aware of the fact, although we had no control over Alburg's books at all--they were an independent entity as far as bookkeeping was concerned. We realized they were in dire trouble and we were trying to figure out where the problem lie. Now I had arranged when Alburg was first set up, I went up myself and set up a production schedule for them, where they would have complete control over the milk on hand, the

[754]

milk they were getting in, the milk used in the daily consumption, and the product that they were getting out of that given milk. Using these figures, they were sending them on every day, see, and we would see what was happening in the plant, visually. We were getting them every fifteen days. That is neither here nor there, but using these figures, we were able to determine what the yield for any given cheese was.

Q When you say "yield," you mean the amount, the poundage of cheese per hundredweight of milk?

A. The amount of cheese out of a hundredweight of milk.

Q And, you heard Mr. Falcone testify if they were efficient, they would get about ten pounds per hundredweight?

A. On a whole milk basis, the rule of thumb is ten pounds per hundredweight.

Q Did you know Mr. Vincent Falcone?

A. Yes, I did.

Q Who is he?

A. He was the President of Falcone Dairy.

Q He is related to Joseph Falcone?

A. Brother.

Q Could you tell me whether or not you ever personally had knowledge of any letters that he sent to the plant concerning this?

A. Concerning the yield?

Q Yes.

A. Definitely. I typed them.

Q You typed them?

A. Yes, I did.

Q Did you take the dictation on them?

A. I don't take dictation.

Q Did you write it out?

A. I type fairly well in my own system. I met with Mr. Falcone, I believe, at at least one or two occasions.

Q Vincent?

A. Mr. Vincent Falcone, because that situation was getting to be a serious problem in the yield--high in the yield in what we call creamery terms. That is a different subject. I couldn't get anywhere with Mr. Laramee on the thing, so I figured we had to take the bull by the horns, and I figured a letter coming from Mr. Falcone, the President of the company, would have more emphasis than coming from me. So, we got together and we drafted a letter, and I typed it up.

MR. ANOLIK. I ask these be marked for identification.

CHIEF DEPUTY CLERK LAFAYETTE. Defendants' Exhibit "M" for identification is a copy of a letter dated January 6, 1971; Defendants' "N" for identification, copy of a letter dated March 9, 1971.

[756]

Q (By Mr. Anolik) I show you Defendants' Exhibits "M" and "N" for identification. (Handed to the witness) Can you positively tell me if you can identify these as copies of a letter you typed and mailed to Alburg Creamery?

A. They are.

Q And, how can you identify them?

A. Well, I remember the phrasing, and I can identify it by VF:jc.

Q "JC" being who?

A. Joseph Currari.

Q You typed it yourself?

A. I did.

Q And, mailed it yourself?

A. I did.

Q Can you tell me where you obtained these copies?

A. We obtained them out of our file this past weekend.

MR. ANOLIK. I offer them in evidence, your Honor.

MR. COOK. May we look at them.

MR. ANOLIK. Sure. (Handed to Mr. Cook)

MR. COOK. No objection, your Honor.

THE COURT. Admitted.

(Defendants' Exhibits "M" and "N" were received in evidence.)

Q (By Mr. Anolik) Would you now tell the jury what the sub-

stance of these letters are?

A. Want me to read them?

Q Any portions, since they are in evidence, you feel are important.

A. I will read the letter of January 6, 1971. (Reading) "Leo Laramee, Alburg Creamery, Inc., Alburg, Vermont. Dear Leo: As per our numerous phone conversations, we are once again complaining about the extremely low yields which we are getting. This condition has existed now for the past three or four months and is not getting any better. It is astounding that a man of your experience can have this condition set in and not be aware of it. Surely, it should have been picked up at your end and not here in New York. This is unpardonable and shows poor manag ement and control on your part. Upon analyzing your daily work sheets, we find that your yields are averaging about nine pounds per hundredweight. As you well know, we should be getting at least ten pounds; thus, we are losing approximately one pound per hundredweight. Multiply this by our volume of milk consumed during the month, and you can readily see why we are losing money in our plant operation. There must be something wrong with your milk, or in your production method. I would be more inclined to think that it is in the milk, as your production method has not changed, and we never had this condition before. I strongly insist that you investigate every area and correct the problem as we

cannot continue operating at this rate. Keep in touch with me as to your findings and pay more attention to your operation. Very truly yours, Falcone Dairy Products, Inc., Vincent Falcone, President."

The following letter is March 9, 1971. (Reading) Alburg Creamery, Inc., Alburg, Vermont. Attention: Leo Laramee. Dear Leo: We are still getting ridiculous yield. When will this stop? Your January average was 8.94 pounds per hundredweight. February was 9.28, and this month we once again have slipped down to yields as low as 8.2. At this rate, we will have to shut down the plant as it is getting to be more profitable to buy cheese than to manufacture it. You tell me that you are receiving frozen milk with low solids. This would definitely account for low yields. It is imperative that you contact United Farmers and find out why we are receiving milk in this condition and poor quality. Also, make arrangements for a price adjustment, as we are paying for good quality milk and not water. I cannot impress you enough as to the seriousness of our position. Please exert every effort to correct this condition and don't forget to arrange for an adjustment on past milk received that was sub-standard. Very truly yours, Falcone Dairy Products, Inc., Vincent Falcone, President".

Q (By Mr. Anolik) Now, would you tell me, if you can, what this yield differential meant in terms of price and cost?

A. Well, for every pound of cheese that you lose on your yield, on your hundredweight, you are losing approximately twenty-five cents per pound and you can work that right down.

Q In the cheese business, would you say that is a competitive business?

A. Is it competitive?

Q Yes.

A. Highly competitive.

Q Would twenty-five cents per pound be a substantial amount?

A. That is the difference between life and death.

Q And, the Department of Agriculture's figures, Exhibit "J" in evidence, indicates in April of 1971 a yield of only 9.03 per pound, is that correct?

A. Yes, 9.03.

Q Now, Mr. Curreri, you had returns all through 1971, did you not?

A. Yes, we did.

Q Now, for example, with respect to Ferro--when I say "Ferro," what does that mean to you?

A. Ferro Cheese Company.

Q By the way, where were they located with reference to you?

A. I think we would have to clarify that. We were on West 3rd Street. There was a road--we were on West 3rd Street--between Cobeck Court and Avenue Y.

Q Address the jury, rather than me.

A. They were on Cobeck Court. It was a building that was one building removed from the back of our building. There was a building inbetween us.

Q So, they were not a common area?

A. No, there was a building between us.

Q Now, would you tell me whether or not they had a very large warehouse of their own?

A. No, they had a very small warehouse for the type of business they were in.

Q Now, did they ever order cheese from you and keep a quantity of it in your warehouse and draw against it?

A. Well, from necessity, they had to at certain times, because Ferro Cheese Company was not only in the cheese buiness, they were restaurant suppliers. They supplied the restaurants with a full line of products--tomatoes, cheese, whatever a restaurant requires--and therefore, all space consuming. So, their regular space was limited and there were times we utilized Ferro Cheese to get rid of your cheese during the flush periods when we really had to get cheese and push it out.

Q What is the flush period?

A. Flush period is where there is an over-abundance of milk for manufacturing; usually, April, May and June.

Q And, therefore, there is a higher production of cheese?

[761]

A. Definitely; more than we can utilize.

Q Would you explain, if you can, how this situation would obtain, for example, Mr. O'Neill, I believe it was, or you, George--Mr. O'Neill placed these figures on the board. Falcone shipped seventy thousand some odd dollars red entries to Ferro; $86,011. Would you explain how that might have occurred?

A. Yes. Those figures are very misleading. What Mr. O'Neill, or the accountant did there was just take the activity, the physical activity during the period July through December, but this does not reflect what precipitated those figures. What precipitated the figures was the activity prior, especially the activity from in July and August, withe the activity prior to July of that year. In other words, the cheese they received could be any where from January, February, March, April would not be reflected until July, August or September, because they would not push the cheese out immediately. They would hold the cheese for a period of time. Then the only time they would be aware of any problems would be once it hit the market place, because your cheese is packed in what we call Cryouac Bags. It was what the name implies. It creates a vacuum; The vacuum is drawn on the cheese so you don't know whether it has any defect in it or not from the odor point of view until that bag is broken. From outward appearances, I

[762]

could break a pice of cheese in the courtroom right now. It could be highly defective and you wouldn't know it was, but if I burst that bag, you would definitely know it was. No question about it. So, that is deceptive because they may have received cheese prior to July that would be reflected as a credit, subsequently, in July and August. Does that answer the question?

Q Let us assume that Mr. Ferro's firm, or is it Ferro Dairy?

A. Ferro Cheese Company.

Q Ferro Cheese Company , although not strictly a cheese company, were they?

A. No, they started out years back as a cheese company and went into the restaurant supply line. I believe it was in the last year or two they changed to Ferro Food Products.

Q Just like Atlantic & Pacific Tea Company, it is no longer a tea company alone?

A. Right.

Q Let us assume, for example, if Ferro Cheese Company purchased 30,000 pounds of cheese and took 5,000 pounds and found that 5,000 pounds defective, would they accept the balance of the 25,000 pounds?

A. No.

Q How would your books be reflected on that transaction, ordinarily?

A. Taking that assumption, that hypothetical case, if we

contracted with them to take X number of pounds of cheese we would bill them for the X number pounds of cheese. Then, if subsequent to that, they did not want the cheese, based on their sampling of the cheese, they already purchased at the market price, we would, in turn, credit them for that cheese.

Q The 30,000 pounds?

A. The 30,000 pounds or cost if we knew exactly what the transaction was going to be at that time, see, then we would make the adjustment at that time, credit for what they used and charge used, and credit for the surplus.

Q But that discrepancy in the record of receipt of cheese would be one figure whereas, your record of purchases might be much larger?

A. Conceivably, depending upon their bookkeeping procedure. Now, if I recall at that time, Mr. Ferro had a one-girl office. He has expanded since then. Conceivably, they can get the invoice from Falcone Dairy Products, and based on this sampling not be so satisfied with it and he may say "Hold up the invoice," she would not enter that invoice, so, therefore, when the deal was ultimately consummated, or finalized, she would not have that on her books. We would have it on our books as a debit, Now, we would have to issue a credit to offset. That is a wash--one against the other. So all that would be charged for would be what

[764]

they actually utilized.

Q So would it be fair to say then it could very well then, so far as the Ferro Cheese Company books are concerned, that there might be a figure of greater purchases--I mean greater credits in your books than there was purchases by them? Isn't that true?

A. Oh, yes.

Q Now, Mr. Curreri, were your books kept strictly by the girls?

A. Strictly by the girls.

Q At any time, were the girls instructed to put in improper entries?

A. Never.

Q Were you ever instructed to do anything improper whatsoever?

A. Never was, never would.

Q Now, Mr. Curreri, you heard the testimony with respect to a particular entry of $210,000; $210,711.05. I am referring now to Government's Exhibit "72" in evidence. Can you see it all right, Mr. Curreri?

A. I know it; I know the exhibit.

Q The jury, I think, knows it too. Now that particular entry was made in January of 1974, is that correct?

A. That, it was.

Q Would you explain to the best of your recollection, to the jury and his Honor, how that came about?

A. Well, that came about, more-or-less, by accident; just very casually in this respect. I was called down to the credit. By that time, Albury was thrown into bankruptcy, involuntary bankruptcy. There was talk of bankruptcy at the time, and we had a ten-day bankruptcy meeting. I was called in to see what help I could render if any questions were asked of Falcone Dairy Products. I had nothing to do with Alburg. I was not called to testify. I think Mr. Falcone did testify at this hearing. A recess was called. Mr. Falcone and I and Mr. Wool walked out in the hall to have a cigarette.

Q Mr. Wool being the lawyer?

A. Yes, and very casually, I think as a topic of discussion, Mr. Wool said "it is a darned shame that the creditors will not accept the offer that was made. I can't understand it becuase they stand to lose an awful lot of money, whereas, if they had taken the offer, in time they would have gotten their money back one hundred per cent on the dollar." Mr. Falcone, subsequent to that, said, "You know, that is true, but look at the loss we took on that bad cheese in the past". Suddenly, it dawned upon me we had not charged Alburg for this cheese, and that, in my mind, this should be put in its proper perspective for the benefit of the creditors. So I mentioned this and told them what it was all about, and Mr. Wool said, "Were these legitimate credits

you extended because of defective cheese"? I said, "Definitely. No question about it". He said, "I don't see why you can't utilize them". So from this casual conversation that didn't take more than five or ten minutes at the most, I was instructed by Mr. Wool and Mr. Falcone to go back and draw up a list of these credits. When I say "draw up a list" subsequently, there was no list; there was never a list made other than what I took out and copied from the Cash Sales Book--the Sales Book, rather.

Q You are talking about Exhibit "F"?

A. Yes.

Q That was the only list?

A. Yes, I typed this. I did not make up a list for obvious reasons. This thing covered from July through December, quite a few pages here. By that time, Falcone Dairy Products was in bad shape. We went from the five-girl to a one girl office, and she was pretty consumed all the time. It was more expedient for me and more factual if I took these credits right from the records. In other words, we had a photo machine there. I took copies of the Sales Journal which was made back in 1971, so it wouldn't actually be a list of credits I compiled at that time, and I took and copied it from the Sales Journal for the period July through December. The reason we took that period, Mr.

Falcone and I thought back. We went back and figured this was the period. We knew where we had all this problem. So I made copies of this list on a month-to-month basis--July, August, September, October, November and December--and made a tape of each credit. Subsequent to that, I took a total of each monthly tape and made one composite tape which came to $210,000 or thereabouts. This is what I submitted. I made a copy of it for our own records and submitted one copy to Mr. Wool who, in turn, it is my understanding, submitted to the bankruptcy judge, or whatever he submitted it to.

Q Judge or referee?

A. This was simply for clarification, not for gain. There was no gain intended here. It was strictly to clarify and put in proper perspective the condition that existed with Alburg at that time, because as far as I was concerned, the creditors were given a false picture of what really existed there, I think.

Q You mean, in 1974?

A. 1974. You have to realize one thing. I can only speak for myself and maybe the girls in the office considered Alburg Dairy Products and Falcone Dairy one--mother and child relationship, more-or-less. What affected one would affect the other--as Alburg goes, so goes Falcone; as Falcone goes, so goes Alburg. So, it served the purpose at that time.

[768]

Q 1971?

A. 1971. It served no purpose in 1971 to directly charge Alburg with each individual credit here, because all it would be doing is encumbering the New York office and the Alburg office; additional entries that would serve no function and purpose, because we could never, based on the condition of Alburg, the financial condition of Alburg at that time, get any benefit out of these credits. They didn't have the money to pay it; they could hardly pay their bills. Now if we took any part of this credit at that time, and it amounted to quite a sum of money, Alburg would have been bankrupt then. I think you can correctly understand our sole aim was for survival. We needed Alburg to survive. To put them in a worse position they were in would be insanity and suicide on our part. So it had no purpose, in fact, to even charge them for this. All right, fine, you say, why do it at a subsequent date? This was not something we wanted to do, but Alburg was put into an involuntary bankruptcy position. Now we felt if things had to be put in the proper perspective, we were trying to divulg e, not hide. We were trying to divulge, in honesty, what the true picture of Alburg was. Falcone was not a debtor of Alburg's. In this instance, Falcone Products was a creditor of Alburg's and all we intended to do with this, I only went up to July . Actually, I could

have gone straight through into next year. We were still crediting against Alburg's merchandise. It didn't cease. Might you let me say why? Why did I go up to December? Can I continue on?

Q Yes.

A. For that one reason, we didn't want to get any gain out of this. I could have kept taking credit after credit. I wanted to show a picture to the creditors and there was enough to bring in $210,000 against Alburg. We did not owe Alburg any money. In substance, they owed us money. The same picture would never have changed if we theoretically charged them back for all these credits throughout this period of time. The picture would not have changed. The final line would have been the same as that clarified.

Q Let me ask you this. Once Alburg was already bankrupt, the taking of credit did not have any significance, isn't that true?

A. Once it was bankrupt?

Q Yes.

A. Of course not.

Q Falcone benefitted nothing from that, isn't that true?

A. Absolutely nothing.

Q Falcone didn't participate in the distribution of assets?

A. Definitely not. Falcone had no money to contribute either. It was in debt. We were down to a one-girl office.

Within two or three months after that, I, myself, was out of a job. That is how bad Falcone was in.

Q Would it be fair to say after your conversation with Mr. Wool, you felt that this entry had to be made to divulge information so there would be no concern?

A. That was the only purpose in my mind, and that is why I can't understand why I am here.

Q Now, Mr. Curreri, you also had certain conversations with the F.B.I.. You testified in the grand jury, isn't that true?

A. Yes, I did.

Q You testified in the grand jury voluntarily, did you not?

A. I definitely did.

Q You had no lawyer?

A. No.

Q You did not take the Fifth Amendment or anything of that sort?

A. Never would.

Q You spoke to the F.B.I. and you signed a waiver of your rights, didn't you?

A. Yes, I did.

Q You had no lawyer, did you?

A. No.

Q You were told by me that you did not have to even testify at this trial if you didn't want to?

A. Yes, I was.

Q You told me you wanted to testify?

A. Definitely.

Q Everything you have told me today, is it the truth?

A. It definitely is.

Q Now let me ask you just a few questions more. I think we might be able to finish. I would like to just ask, briefly, were you personally familiar with the entries that Mr. Mario Accardi made, your C.P.A., concerning the unrealized appreciation?

A. No, I didn't know anything about that.

Q You didn't have anything to do with that?

A. Had nothing to do with the funding of Alburg at all, or Falcone, for that matter.

Q You knew Falcone was seeking loans?

A. Yes, definitely.

Q And, would you say that Mr. Joseph Falcone was actively engaged in his business?

A. Yes, he was.

Q Was he a hard-working individual?

A. Extremely so.

Q How long have you known him, by the way? Many years?

A. I would say twenty-three years.

Q And, can you tell me whether or not throughout those entire twenty-three years, he has ever asked you to do anything

improper?

A. Never has.

Q And, did he ever have anything to do with the books and records?

A. No.

Q Does he know anything about the bookkeeping records, as far as you know?

A. No, he doesn't know anything about books and records.

Q Now when Mr. Accardi came, was he told about the credit that had been taken?

A. Yes. When Mr. Accardi came, he always came toward the end of the month. I explained to him what had transpired up here in Burlington, and we discussed it, and he says, "Well, these credits, you know, should have been taken as they went along, but I know why you didn't," but he says, "I don't see anything wrong with taking them now in view of the fact Mr. Wool said legally, it was all right. As far as accounting wise, there is nothing wrong with it".

Q So you really had a legal opinion and a certified public accountant's opinion?

A. Yes, I did.

Q With respect to the entry, for example, the entries on the board here, these entries are reflected in the material that was made and placed in the books by the girls in the office, isn't that so?

A. Yes, sir.

Q Mr. O'Neill asked Mr. Falcone, "Well, the girls in the office didn't go out and physically make up the warehouse invoices, or the lot numbers, they didn't drive in the trucks". From your experience, did the girls ever do those things?

A. No, no more than girls in General Motors go out and make the cars.

Q So, in other words, they obviously relied upon what they were given at any time, is that true?

A. Definitely.

Q So far as you know, were they ever given anything and said, "Look, this is not correct, but put it in anyway"?

A. No, they wouldn't do that.

Q They, themselves, wouldn't do that?

A. No.

Q So far as the red entries are concerned, what do you understand a red entry to be?

A. A red entry is a credit for the Sales Journal.

Q Now, it could be for several things, isn't that true?

A. Yes.

Q Your recollection now, during the period 1971 with respect to red entries, is what, primarily?

A. Primarily, they were credits for return of cheese, and conceivably, could be credits for price adjustments that

were made due to the defective cheese.

Q Let us assume that a cheese that was defective could, nevertheless, perhaps be sold b y the customer at a lower grade, so to speak. What might be done in that case, credit-wise?

A. We would give them a price adjustment on the cheese in order to induce him to keep the cheese rather than bringing it back to us.

Q Was it the policy, however, of Falcone Dairy to give discounts?

A. No, we never gave discounts.

Q So, the price adjustment was because of a quality differential?

A. Right, it could be.

Q Are you familiar with the entry "return to salt"?

A. Yes.

Q Or, "Return to Lot X"? What do you understand that to mean?

A. "Return to salt" is a phrase that has been used over the years. We had what you call a salvage operation. Cheese, unfortunately, is not like making a table. There are so many invariables in the making of cheese, so many things that go wrong, that we always, always had what we call returns within limits. So we also had it in conjunction with the distribution, a processing operation in Falcone Dairy, where we processed and salvaged certain

cheese when it was necessary. We didn't want to salvage it. It was a necessary object to our operation. So, throughout the course of years, anything that came in that had anything wrong with it, of any nature, the warehouse men would put "return to salt". It didn't necessarily mean it went to salt. In other words, cheese that came back would be put into the warehosue and the men in the processing room would draw from that cheese. Only at that point would we really know. Only would they really know--I am talking "we"--would know the condition of the cheese. More-or-less, we had got the complaint in the office, but only the men in the warehouse would know whether the cheese was salvageable or not, see, and if it was salvageable, they would grind it up and grate it. Some times, they would try to salvage it, although it did have an odor. Some times, we found the odor would dissipate if grinded, and if the odor was still there, the cheese was disposed of. We could do nothing with cheese that was smelly or had a foul taste.

Q Some times, it was called "Lot X"?

A. Yes.

Q And, some times given a particular number, isn't that so?

A. Yes. No, wait a minute. If cheese was defective, it would never be thrown back. That is why we gave the lot numbers. If the cheese was good, and we knew it was good, it would be thrown back into its original lot number.

Q It would be?

A. Yes.

Q But if the cheese was not good?

A. It would go X or salt.

Q If the cheese was returned, however, that was not fouled it would be returned to its original lot number, isn't that true?

A. Yes.

Q But a credit still given?

A. Oh, yes.

Q I think I covered this, but my associate, Mr. Murdoch, feels thtt perhaps I should ask again. At the time that the entry of $210,000 was made in 1974, Falcone Dairy, in effect, was out of business, too, isn't that true?

A. Definitely was.

MR. ANOLIK. I have no further questions.

THE COURT. We'll take our morning recess at this time.

(Court recessed from 10:45 - 11:05 a.m.)

THE COURT. Mr. Cook, are you ready to proceed?

MR. COOK. Yes, thank you.

CROSS EXAMINATION

Q (By Mr. Cook) Mr. Curreri, I understand that you worked for Falcone Dairy Products approximately fourteen years?

A. Approximately thirteen years.

Q And, during the period from 1969 to 1973, I take it, outside of Mr. Joseph Falcone and perhaps a brother, you were the senior administrator to the business end, or in the office down there?

A. I was office manager.

Q Is it fair to say there was nobody between you and Mr. Joseph Falcone from a point of view of being responsible for the office?

A. I would say that.

Q And, that would include this entire period from, we'll say, 1968 or 1969 up through 1973?

A. Yes, sir.

Q Now I think that you heard your grand jury testimony read, I believe, and I believe you also heard an agent from the F.B.I. read your statement to the F.B.I. two or three days ago. Do you remember that situation?

A. Yes, I do.

Q And, I believe it was in the statement to the F.B.I. agent from New York City that you stated the girls made the bookkeeping entries but that you were the person who authorized unusual entries?

A. Yes, I did.

Q That is the fact of the case, isn't it?

A. That is true.

Q Now going back to 1971, as you have testified to on direct examination, you said there came a period of time when you got substantial complaints about fishy and rancid cheese, is that right?

A. That is right.

Q And, can you tell me when, during 1969, you feel that you had that complaint so that we are safe to pick out, say, some point where you knew there was a substantial---

A. You said, 1969.

Q I am sorry, 1971. Was there some month when you felt it was such you knew you had a real big problem in regard to fishy and rancid cheese?

A. We realized the problem during the latter part of June, coming into July; from July right straight through.

Q Eventually, it has been your testimony, and as I recall Mr. Falcone's testimony, that you more-or-less eliminated that problem by not holding Alburg cheese any long er than say a few days, or a very short time?

A. That was not my testimony, it was Mr. Falcone's testimony.

Q Do you agree with Mr. Falcone with regard to the fact that that problem of rancid and fishy cheese was eliminated insofar as Falcone getting complaints on it was due to the fact that you got rid of Alburg cheese shortly after it arrived?

A. That helped the situation.

Q Well, once again, do you agree, substantially, with what Mr. Falcone testified with regard to his explanation?

A. As far as getting rid of the cheese as soon as it came in, it helped and alleviated the situation. We didn't get rid of the problem entirely; it helped.

Q Eventually, the problem went away, didn't it?

A. That problem went away. There are always problems.

Q I want to talk about fishy and rancid cheese. I want you to understand what I am talking about, because that is going to be the only thing, probably, I will be talking about with you is the fishy and rancid cheese from Alburg. When did that problem go away?

A. To the best of my recollection, that subsided, I'd say, around November or December; we started to get substance on it.

Q November and December of 1971?

A. Right.

Q Now, you are well alerted to the problem, I think you just testified to, by June of 1971, is that right?

A. Probably by June, yes.

Q And, between June and December, did there come a time when you decided that "we can alleviate this problem," to use your words, by getting rid of this cheese more quickly and not keeping it around so it will age with us, and by the

time we ship it out, it will be aged to the point where it will be fishy?

MR. ANOLIK. I object to the form of the question.

MR. COOK. I will start over; it is not very good.

Q (By Mr. Cook) Assuming, if you will, from your previous answers that you were very well aware of the problem by June, it was over with by December of 1971, when did you make the decision to get rid of the cheese in a hurry so that the fishy and rancid smell wouldn't come about due to aging?

A. That is a difficult question to answer.

Q I am not asking for a date, a specific date, or anything of that sort.

A. I would have to elaborate.

Q Well, if you cannot answer it, fine, but if you can give me an approximate period of time--listen to my question--if you can give me an approximate period of time when you decided to get rid of the cheese in a hurry between June and December of 1971 so that you wouldn't have the problem, tell me when that approximate date was.

A. I cannot do that without elaborating.

Q Well, can you give me the date, and I will let you elaborate.

A. We were aware of that---

Q No, can you answer my question?

A. I can't do that without elaborating that; I am sorry, without clarifying the situation.

Q Without elaborating, can you give me an approximate date?

A. When I get done elaborating?

Q Yes.

A. Approximately.

Q But, you are not sure?

A. I am not fully sure when we were aware of getting rid of the cheese as soon as possible would give us the least amount of problems, because we had to have some familiarity with cheese and its problems that exist. We knew any cheese that has a problem, the sooner you get rid of it the better. There is a build up of this problem, but being aware of it didn't mean we could do it. We had inventory. I explained we had inventory. We had a rotation. Business says that the cheese in the inventory had the disease in it also, so getting rid of the new stuff, fine, that is great, but the inventory is still building up like crazy so, therefore, that is why I can't give you a specific date we were aware of it. No question about it.

Q I am not asking you for the date when you got rid of all the cheese in a hurry. I am asking for the date when you decided you could probably alleviate this problem by not

holding the cheese and getting rid of it in a hurry.

A. I would say probably around November is when we caught up with our cheese to the point we could do that.

Q It took you from June when you had a very serious problem until November before you decided that you could substantially alleviate the problem by shipping the cheese out in a hurry?

A. I am sorry, you are not---

Q Tell me again, if I am wrong.

A. I explained to you that we knew getting rid of it as soon as we could would help the problem.

Q When did you know that? That is what I want to know.

A. We knew that immediately when we started getting all the foul cheese back. This is not a hard thing to understand. The sooner we get rid of it the better. The sooner you get rid of cancer, the better chance of your survival. We had an inventory as of June, I'd say, close to $300,000 worth of inventory in Falcone Dairy in your warehouse. In Alburg, I'd say there was in excess of $100,000 worth. This has a bearing on it.

Q We are arguing over something--I don't know if we are arguing, but you have given me the answer. Isn't it as soon as you realized you had the big problem in June, you knew you could substantially alleviate the problem by getting rid of the cheese in a hurry?

A. Yes, it is physically possible.

Q It was physically possible to do so?

A. Right.

Q And, as a matter of fact, you tried to do that within the limits of your inventory and your sales and other matters that would bear on it, too, isn't that true?

A. That is right.

Q Actually, this cancerous condition, or diseased condition you say of the cheese, it didn't really eliminate the problem, but it passed it on to a consummer, isn't that right, and possibly the cheese would get eaten up before the problem ever developed?

A. Right.

Q The problem was there, you said, before the problem developed?

A. Before the problem developed?

Q In the nature of complaints.

A. Oh, all right.

Q Now again, if I understand your testimony correctly, that with regard to fishy and rancid cheese, by December of 1971 that problem had pretty well gone away now, is that right? You just told me that, didn't you?

A. By December it had gone away to the extent where we weren't being deluged with complaints because at that point we were working into fresh merchandise.

Q You did business with Alburg for 2-1/2 years afterwards, didn't you?

A. Yes, we did.

Q Got just about as much cheese in the next 2-1/2 years as you had in the prior 2-1/2 years?

A. Right.

Q And, you aren't going to tell us here that that fishy, rancid taste problem didn't eventually become resolved?

A. Yes, it did.

Q It became resolved?

A. Yes.

Q And, I think your testimony was it was around December of 1971?

A. Yes.

Q So that now, as I understand your testimony, however, looking at the blackboard which contains the figures which Mr. O'Neill wrote following Mr. Axten's testimony, that from January to June there was $121,000 worth of rancid, fishy cheese, and from July to December there was $206,000 worth of rancid, fishy cheese which you took credit for a total of three thousand thirty some odd thousand dollars. Now, is that your testimony or not?

A. No, it isn't.

Q How much of that, between July 1st and December 31st of that $206,000 would you say is rancid, fishy cheese from

Alburg?

A. The cheese from July 1st through December 31st we know was rancid, fishy cheese. The cheese from January---

Q From Alburg?

A. From Alburg.

Q None from Milton?

A. None from Milton.

Q Now, you had a couple other suppliers?

A. No, we only had Milton at that time.

Q Only at that time, Milton?

A. Right.

Q All from Alburg?

A. Right.

Q How about the preceding six months? I don't believe I got that right.

A. January through June, we had a problem that had nothing to do with Alburg.

Q Nothing to do with rancid, fishy cheese?

A. Nothing to do with rancid, fishy cheese.

Q Then we aren't interested. Now you would say, would you not, that $210,000 in money in credits was a very important asset to a corporation the size of Falcone Dairy?

A. Definitely is.

Q Not to use a word on it, but it wasn't peanuts?

A. No, it wasn't.

[786]

Q And, so when there came a time, I am sure you being the person who supervised the books of Falcone Dairy and who supervised the bookkeeping and who made authorizations for the unusual entries, so to speak, there came a time probably in December or January--December, 1971 or January, 1972--when you realized that Falcone was holding a very valuable asset which could be asserted at any time against Alburg, is that true?

A. On the books, we were holding an asset. In substance, it was no asset.

Q Well, if Alburg had struck gold, it would be a very important asset, wouldn't it, or oil?

A. If Alburg had struck gold?

Q Yes.

A. Definitely.

Q And, to the interest of Falcone Dairy, you just testified $210,000 was a very important asset?

A. Yes, it was, if it was collectible.

Q Will you agree with me that there is nothing on the books of Falcone Dairy which in any way indicates that there is a $210,000 credit which they can assert at any time against Alburg Creamery?

A. Yes, there is the credit on the books to the extent of $210,000 we could assert at any time.

Q And, definitely related to Alburg Creamery?

JUDGMENT AND COMMITMENT OF JOSEPH FALCONE

United States of America vs.

United States District Court for

DEFENDANT: JOSEPH FALCONE — DISTRICT OF VERMONT

DOCKET NO.: Cr. 75-37

JUDGMENT AND PROBATION/COMMITMENT ORDER

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date — MONTH: 4 DAY: 19 YEAR: 76

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waive assistance of counsel.

[X] WITH COUNSEL James Murdoch, Esq. and Irving Anolik, Esq. (Name of counsel)

PLEA

[ ] GUILTY, and the court being satisfied that there is a factual basis for the plea, [ ] NOLO CONTENDERE, [ ] NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of [ ] NOT GUILTY. Defendant is discharged [X] GUILTY.

Defendant has been convicted as charged of the offense(s) of violation of Sections 371, 152 and 2, of Title 18, United States Code.

APR 19 4 50 PM '76 CLERK U.S. DISTRICT COURT DISTRICT OF VERMONT FILED

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of three years as to Counts 1, 2, 3, 4 & 5; said sentences to run concurrently with each other.

committed

It Is Further Adjudged that defendant pay a/fine of $ 2,000.00 on each count for a total of $ 10,000.00.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

[X] U.S. District Judge

[ ] U.S. Magistrate

Albert W. Coffrin

Date April 19, 1976

5-A

BEST COPY AVAILABLE

JUDGMENT AND COMMITMENT OF JOSEPH CURRERI

United States of America vs.

United States District Court for

DEFENDANT: JOSEPH CURRERI

DISTRICT OF VERMONT

DOCKET NO.: Cr. 75-37

JUDGMENT AND PROBATION/COMMITMENT ORDER

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date — MONTH 4 DAY 19 YEAR 76

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

[X] WITH COUNSEL James Murdoch, Esq. and Irving Anolik, Esq.
(Name of counsel)

PLEA

[ ] GUILTY, and the court being satisfied that there is a factual basis for the plea, [ ] NOLO CONTENDERE, [ ] NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of [ ] NOT GUILTY. Defendant is discharged [X] GUILTY.

Defendant has been convicted as charged of the offense(s) of violation of Sections 371, 152 and 2, of Title 18, United States Code.

Apr 19 4 50 PM '76
U.S. DISTRICT COURT DISTRICT OF VERMONT FILED
CLERK
DEPUTY CLERK

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of three years as to Counts 1, 2, 3, 4 & 5; said sentences to run concurrently with each other.

It Is Further Adjudged that defendant pay a committed fine of $ 500.00 on each count for a total of $ 2,500.00.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY
[X] U.S. District Judge
[ ] U.S. Magistrate

Albert W. Coffrin

Date: April 19, 1976

A-513

NOTICE OF APPEAL

DISTRICT COURT
DISTRICT OF VERMONT
FILED

APR 22 9 36 AM '76

CLERK
BY _____
DEPUTY CLERK

UNITED STATES DISTRICT COURT

DISTRICT OF BURLINGTON

Docket Number 75-CR-37

UNITED STATES OF AMERICA

Albert W. Coffrin
(District Court Judge)

-vs-

JOSEPH FALCONE &
JOSEPH CURRERI

NOTICE OF APPEAL

Notice is hereby given that JOSEPH FALCONE & JOSEPH CURRERI appeals to the United States Court of Appeals for the Second Circuit from the XX Judgment ___ order ___ other (specify) sentence entered in this action on April 19, 1976 (Date).

Date April 21, 1976

To:
Edward Trudell, Clerk
Jerome O'Neil, U.S. Attorney

JAMES W. MURDOCH, ESQ
(Counsel for Appellant)
Address 131 Main Street
Burlington, Vermont
(802) 864-9811

IRVING ANOLICK, ESQ.
225 Broadway
New York, New York
Phone Number (212) 732-3050

ADD ADDITIONAL PAGE IF NECESSARY

(TO BE COMPLETED BY ATTORNEY) TRANSCRIPT INFORMATION – FORM B

▶ QUESTIONNAIRE	▷ TRANSCRIPT ORDER	▷ DESCRIPTION OF PROCEEDINGS FOR WHICH TRANSCRIPT IS REQUIRED (INCLUDE DATE).
XX I am ordering a transcript ___ I am not ordering a transcript Reason: ___ Daily copy is available ___ U.S. Attorney has placed order ___ Other. Attach explanation	Prepare transcript of XX Pre-trial proceedings XX Trial XX Sentence XX Post-trial proceedings	

The ATTORNEY certifies that he will make satisfactory arrangements with the court reporter for payment of the cost of the transcript. (FRAP 10(b)) ▷ Method of payment XX Funds ___ CJA Form 21

ATTORNEY'S signature [signature] DATE April 21, 1976

▷ COURT REPORTER ACKNOWLEDGEMENT

To be completed by Court Reporter and forwarded to Court of Appeals.

Date order received	Estimated completion date	Estimated number of pages
4/26/75	5/26/75	1200

Date 4/28/75 Signature [signature]
(Court Reporter)

ORIGINAL

In the District Court of the United States for the

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

ROBERT LA GRASSA, being duly sworn, deposes and says that deponent is not a party to the action, is over 18 years of age and resides at 62-20 60th RD. MASPETH, N.Y.

That on the 19 day of AUGUST, 1976, deponent personally served the within APPENDIX upon the attorneys designated below who represent the indicated parties in this action and at the addresses below stated which are those that have been designated by said attorneys for that purpose.

~~By leaving _____ true copies of same with a duly authorized person at their designated office.~~

By depositing 1 true ~~copies~~ copy of same enclosed in a postpaid properly addressed wrapper, in the post office or official depository under the exclusive care and custody of the United Stated post office department within the State of New York.

Names af attorneys served, together with the names of the clients represented and the attorneys' designated addresses.

HON. GEORGE W.F. COOK
UNITED STATES ATTORNEY
ATTORNEY FOR APPELLEE
UNITED STATES COURTHOUSE
RUTLAND, VERMONT

Robert La Grassa

Sworn to before me this
19th day of August, 1976

Michael DeSantis

MICHAEL DeSANTIS
Notary Public, State of New York
No. 03-0930908
Qualified in Bronx County
Commission Expires March 30, 1978

77